

COVID-19 (TEMPORARY MEASURES) ACT 2020

Updated as of 22 April 2020

1. On 7 April 2020, Parliament passed the COVID-19 (Temporary Measures) Act 2020 (the “**Act**”). There are 6 key parts to the Act, namely:
 - a. Temporary relief for inability to perform contracts;
 - b. Temporary relief for financially distressed individuals, firms and other businesses;
 - c. Temporary measures for conduct of meetings;
 - d. Temporary measures for Court proceedings and Syariah Court proceedings;
 - e. Temporary measures concerning remission of property tax; and
 - f. COVID-19 control orders.
2. This update will provide you with a summary of the temporary reliefs afforded under the Act other than the temporary measures for court proceedings and COVID-19 control orders, with a particular focus on the additional relief for the construction industry. If you require an update on the temporary measures concerning court proceedings, COVID-19 control orders, or other specific industries, please contact us and we will be pleased to provide you with a separate update.
3. The provisions in the Act relating to temporary relief measures for the inability to perform contracts; the relief measures relating to financially distressed individuals, firms and businesses; and the additional relief measures for the construction industry came into effect on 20 April 2020.
4. The provisions in the Act relating to temporary relief measures concerning the remission of property tax came into effect on 22 April 2020.

Temporary relief for inability to perform contracts

5. The aim of the relief measures is to provide **temporary** and **targeted** protection for businesses and individuals who are unable to fulfil certain contractual obligations because of COVID-19.
6. The protection measures are only **temporary**. The measures do not absolve or remove contractual obligations to pay or perform services. The measures only suspend the contractual obligations temporarily. They will only be in place for **six months** from the commencement of the Act (i.e. from 20 April 2020 to 19 October 2020). Subsequently, it may be extended by Parliament for up to a year from the commencement of the Act.
7. The measures are **targeted**. Not every contract will be protected under the Act. Deposits may have to be refunded even if the contract specifically provides that deposits are non-refundable.
 - a. Time period - The Act will only cover contractual obligations that are to be performed on or after 1 February 2020, for contracts that were entered into or renewed before 25 March 2020.
 - b. Types of contract – The Act only covers the following contracts:
 - i. Leases or licences for non-residential immovable property (e.g. lease for factory premises);
 - ii. Construction contract or supply contract (e.g. contract for the supply of materials);
 - iii. Event Contracts: Provision of goods and services for events (e.g. venue, catering for weddings, business meetings);
 - iv. Tourism-related contracts: Certain contracts for goods or services for visitors to Singapore, domestic tourists or outbound tourists, or promotion of tourism (e.g. cruises, hotel accommodation bookings);
 - v. Hire-purchase agreements where the good hired or conditionally sold is (i) any plant, machinery or fixed asset located in Singapore and is used for a business purpose; or (ii) a commercial vehicle; and
 - vi. Certain loan facilities granted by a bank or a finance company.
 - c. Scope of protection – The Act prohibits a contracting party from taking the following legal actions against a non-performing party in relation to a protected type of contract:
 - i. Court and insolvency proceedings (including enforcement of judgments and decisions) against the debtor and its guarantor (excluding international arbitrations);
 - ii. Enforcement of security over immovable property as well as movable property that is used for the purposes of business or trade;
 - iii. Repossession of any goods under lease agreement or hire-purchase agreement used for the purpose of business or trade;
 - iv. Call on a performance bond given pursuant to a construction contract; and

- v. Termination of leases or exercise of right of re-entry or forfeiture of non-residential premises.
 - d. Special relief for construction and supply contracts – In the event of a delay or failure in performance within the protection period was caused to a material extent by COVID-19, that period will be disregarded in determining the period of delay for the purposes of assessing damages (including calculating liquidated damages), and the fact that the inability to perform the obligation in the contract was to a material extent caused by a COVID-19 event is a defence to a claim for a breach of contract.
 - e. Special relief for event and tourism-related contracts – Not all deposits can be forfeited even in the event of cancellation of event and tourism-related contracts. This is even if the contract states that the deposit is non-refundable. Whether deposit forfeiture (whether whole or in part) is acceptable will be decided by an assessor appointed by the government. This means that the assessor will review the case of both sides and come to a conclusion as to whether it would be just and equitable to forfeit the deposit.
8. The relief under the Act is available where (1) A party is unable to perform its contractual obligations as a result of COVID-19; and (2) A notification for relief has been served on the other party. Care must be taken to ensure that the notification for relief complies with the requirements under the Act.
 9. On 20 April 2020, the Minister for Law made the Covid-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (the “**Temporary Relief Regulations 2020**”). The Temporary Relief Regulations 2020 primarily deals with the procedural aspect of these temporary relief measures, including the following:
 - a. The forms to be used (which can be found in: <http://wwwmlaw.gov.sg/covid19-relief>);
 - b. The prescribed modes of service (i.e. by electronic means);
 - c. The use of the electronic system that has been established for the purposes of the relief measures;
 - d. The manner of application and procedure involved if parties require an assessor’s determination of the relief measures sought for by a party to a contract.
 10. It should be noted that the Temporary Relief Regulations 2020 allows for an assessor’s determination, along with the facts of the case and arguments put forth, to be published at the Registrar’s discretion. However, such publication will not disclose the names or any information that may lead to the identification of the parties involved.

Additional relief for construction and supply contracts

11. Further specific relief is provided to construction contracts including a bar on calls on performance bonds arising as a result of a COVID-19 event until 7 days before the date of expiry of the relevant bond. A contractor who is concerned that this 7-day period is approaching can make an application to the issuer of the bond for an extension, in which case the Act intervenes to automatically extend the bond to a date 7 days after the period of temporary relief.
12. The Act also provides that liquidated or other delay damages are not payable during the period of temporary relief. Where a party becomes unable to perform a contractual obligation and such inability was caused “to a material extent” by a COVID-19 event, the Act provides a defence to any claim for breach of contract.

Temporary relief for financially distressed individuals, firms and other businesses

13. Similarly, the relief measures on bankruptcy and insolvency as set out in the Act are only **temporary**. They will only be in place for six months from the commencement of the Act. Subsequently, it may be extended by Parliament for up to a year from the commencement of the Act.
14. Crucially, the Act increases the monetary thresholds and time limits for bankruptcy and insolvency:
 - a. From \$15,000 to \$60,000 for individuals;
 - b. From \$10,000 to \$100,000 for companies and limited liability partnerships; and
 - c. The time period to satisfy or set aside a Statutory Demand is increased to 6 months.
15. The Act also temporarily relieves directors from their obligations to prevent their companies from trading while insolvent if the debts are incurred in the company’s ordinary course of business, although they remain criminally liable if the debts are incurred fraudulently.

Temporary measures for conduct of meetings

16. The Act allows the Minister for Law to provide for alternative arrangements for the conduct of meetings including meetings of a society or a company. The alternative means include provisions relating to the following:
 - a. How a meeting may be convened, held, or conducted by electronic communication, video conferencing or tele-conferencing;
 - b. The notice requirements, quorum requirements, proxy requirements for a meeting and the means of voting at a meeting;
 - c. How questions may be tabled and responded to at a meeting, including providing for electronic communication or other means; and
 - d. The deferment of a meeting.
17. The alternative arrangements have not yet been published. However, once published and if they are complied with, they are deemed to satisfy all requirements of the law. It is likely that the alternative arrangements will be gazetted soon and we will be pleased to update you if you require.

Temporary measures concerning remission of property tax

18. Where a landlord or property owner receives a remission of property tax that has been provided by the Government under the recently passed Resilience Budget, and that property or part of that property is leased or licensed to a tenant, the landlord or property owner must pass the benefit of the reduction in property tax to the tenant without any discount or conditions attached as long as the tenant was the lessee or licensee during the period for which the remission relates. A failure to do so is an offence.
19. The benefit of the reduction in property tax may be passed to the tenant in one lump sum, instalments or by set off against any rent or licence fee payable by the tenant to the owner.
20. All disputes arising from these measures relating to the passing of the benefit of the reduction in property tax by the landlord or property owner to the tenant will be decided by a Valuation Review Panel comprising of 3 people appointed from the Valuation Review Board. All applications to the Valuation Review Panel must be made within 12 months after the end of the period to which the remission relates.
21. We urge you to take advantage of the temporary protection under the Act. Please feel free to contact us if you require our assistance or if you wish to find out more about the Act.

SINGAPORE

Quahe Woo & Palmer LLC
180 Clemenceau Avenue
Haw Par Centre #02-02
Singapore 239922

T +65 6622 0366

F +65 6622 0377

HONG KONG

Quahe Woo & Palmer (Hong Kong)
Room No. 2512, 25th Floor, Tower One
Lippo Centre, No. 89
Queensway, Hong Kong

T +852 2877 1782

F +852 2877 1127

enquiry@quahewoo.com
www.quahewoo.com