

LEGAL UPDATE

3 April 2020

LEGAL OBLIGATIONS AND COVID-19 – TEMPORARY RELIEF AND MEASURES

INTRODUCTION

To complement the financial measures announced by the Government in the Resilience Budget, the COVID-19 (Temporary Measures) Bill (“**Bill**”) is intended to be introduced at the next sitting of Parliament (intended to take place on or about 7 April 2020).

This new Bill seeks to provide temporary measures concerning the epidemic or pandemic that is COVID-19. **The measures in the Bill are targeted and temporary.** They are designed to alleviate the unexpected pressures COVID-19 has caused to individuals, firms and businesses, as well as the day-to-day operation of the Courts.

In particular, the Bill provides for the following:

- (a) Temporary relief for the inability to perform obligations arising from scheduled contracts (see following section) if the inability to perform is materially caused by a COVID-19 event. **Temporary relief will apply for six months in the first instance but may be extended or shortened by the Minister for Law (the Minister).** The total duration of the temporary relief provided for under the Bill must not exceed one year. The Minister may alter the types of scheduled contracts to which relief applies by an order made.
- (b) Temporary relief for financially distressed individuals, firms and businesses in the current economic climate. These measures involve temporary amendments to bankruptcy and insolvency laws in light of the challenges COVID-19 poses to otherwise viable and

profitable businesses. Safe harbour provisions have also been introduced to provide a safety net to certain individuals so that they may be able to carry out trading while insolvent. **The temporary amendments will apply for six months in the first instance but may be extended or shortened by the Minister.** The total duration of the temporary relief provided for under the Bill must not exceed one year.

- (c) Temporary alternative arrangements that may be prescribed for the conduct of meetings, where (i) personal attendance at a meeting or class of meetings is provided for in written law and certain legal instruments, and (ii) the Minister considers it inexpedient or impracticable for the meeting or class of meetings to be convened, held or conducted in the manner provided for in the written law or legal instrument in view of certain control measures imposed under the Infectious Diseases Act (Cap. 137).
- (d) Temporary measures to allow court proceedings to be conducted using a remote communication technology, which encompasses live video link and television link. Court proceedings conducted through the use of a live audio link will also be allowed in limited circumstances. These measures will enable accused persons and witnesses to give evidence in court proceedings remotely, and the Judiciary to conduct any court proceedings remotely, if certain conditions are met. Safeguards have been included to ensure that only suitable cases are ordered to be heard remotely, and that the court proceedings are conducted fairly.
- (e) **Duty of a landlord who is given property tax remission in 2020 in relation to any property to transfer the benefits of the remitted amount to tenants of the property, and the right of a tenant to take action against the landlord for failing to do so.**

This update serves to highlight and elaborate on the temporary reliefs as well as measures set out in paragraphs (a) and (e) above.

TEMPORARY RELIEF FOR INABILITY TO PERFORM CONTRACTS

Briefly, the Bill is intended to cover five broad categories of contracts:

- (a) **leases or licences for non-residential immovable property** (such as commercial and industrial properties);

- (b) **construction contracts or supply contracts** (such as contracts for the supply of materials);
- (c) **contracts for the provision of goods and services** (such as, for example, venue, catering) for events (such as weddings, business meetings);
- (d) **certain tourism-related contracts** (such as cruises, hotel accommodation bookings); and
- (e) **certain loan facilities granted by a bank or a finance company to an enterprise** (that is, a body corporate or unincorporate that is incorporated, formed or established, and carries on business, in Singapore, where:- (i) not less than 30% of its shares or other ownership interest are held by citizens of Singapore or permanent residents of Singapore or both; and (ii) the turnover of the group (within the meaning of the Accounting Standards applicable to it) to which it belongs does not exceed \$100 million in the latest financial year).
- (j) the exercise of a right of re-entry or forfeiture under a lease or licence of immovable property; and
- (k) the enforcement of a judgment, award or determination by a court, an arbitral tribunal under the Arbitration Act, or an adjudicator under the Building and Construction Industry Security of Payment Act (Cap. 30C).

The measures will cover relevant contractual obligations that are to be performed **on or after 1 February 2020 for contracts that were entered into or renewed automatically before 25 March 2020.**

The Bill also contemplates an affordable, fast and simple framework for parties to resolve disputes arising from these measures. 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 grant relief that is just and equitable in the circumstances. Parties will not be allowed to be represented by lawyers, and there will be no costs orders. Assessors' decisions will be final and not appealable.

The Bill prohibits a contracting party from taking certain legal actions against parties that fail to perform their obligations including:

- (a) the commencement or continuation of court proceedings, or arbitral proceedings under the Arbitration Act (Cap. 10);
- (b) the enforcement of a security over immovable property or movable property used for a trade, business or profession;
- (c) an application for a meeting of creditors to be summoned to approve a compromise or arrangement;
- (d) an application for a judicial management order;
- (e) an application for winding up or bankruptcy;
- (f) the appointment of a receiver or manager over property or undertaking;
- (g) the commencement or levying of execution, distress or other legal process against property, except with the leave of court;
- (h) the repossession of goods used for the purpose of a trade, business or profession under certain agreements;
- (i) the termination of a lease or licence of immovable property for non-payment of rent or other moneys;

TEMPORARY MEASURES CONCERNING REMISSION OF PROPERTY TAX

The Bill also imposes on property owners who benefit from a prescribed remission of property tax, an obligation to pass the benefit on to a tenant of the property.

The tenant could be a lessee or a prescribed licensee of the owner. **The owner must pass on the benefit in the manner, in the amount or to the extent, and in the time, prescribed.** The owner must also keep records evidencing that the owner has so passed on the benefit. Failure to pass on the benefit, or to keep the records, is an offence.

The Bill also provides the tenant with an avenue of redress should the owner fail to pass on the benefit as required under the Bill, or if there is a dispute over whether the Bill applies to the owner. The tenant may apply to a Valuation Review Panel, comprising either one or 3 members drawn from the Valuation Review Board appointed under the Property Tax Act (Cap. 254). The Valuation Review Panel may make further directions for compliance by the owner. A determination and any further directions of a Valuation Review Panel are appealable to the High Court.

CONCLUSION

Parties should therefore carefully study the Bill (and the resulting Act) to see if they (or their counterparties) qualify for relief.

As the situation is rapidly developing and evolving, kindly note that the information set out in this update is correct as at the date of its release.

If you have any questions or comments on this article, please contact:



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