

COMMERCIAL LITIGATION UPDATE

1 April 2020

NEW BILL TO BE PASSED IN PARLIAMENT NEXT WEEK EXPECTED TO GIVE RELIEF IN LIGHT OF COVID-19

SUMMARY

At a Parliamentary sitting on 26 March 2020, Finance Minister Mr Heng Swee Keat spoke about how the Government was studying the issue of providing relief from legal obligations which have been affected by the COVID-19 pandemic. Mr Heng cited the example of individuals who had earlier placed deposits for gatherings and who can no longer hold those gatherings as a result of the newly implemented safe distancing measures, and consequently face the prospect of having their deposits forfeited. Our earlier update discussing this issue may be accessed [here](#).

Next week, a new Bill targeted to provide companies and individuals temporary relief from their contractual obligations in light of COVID-19 will be introduced in Parliament.

This update discusses what we can expect from the COVID-19 (Temporary Measures) Bill.

THE COVID-19 (TEMPORARY MEASURES) BILL

The COVID-19 (Temporary Measures) Bill (“**Bill**”) will cover agreements made before 25 March 2020 (when safe distancing measures were introduced) and is expected to take effect in mid-April. It will cover contractual obligations to be performed on or after 1 February 2020.

The Bill will cover five categories of contracts: non-residential leases, construction or supply contracts, event agreements, tourism-related contracts and secured loan facilities.

As the Bill seeks to provide temporary cash-flow relief for businesses and individuals who have been impacted by safe distancing measures and COVID-19, the Bill will suspend contractual obligations for an initial six months. However, this period may be extended to up to one year from the commencement of any Act that is passed.

Under the Bill, individuals or companies who cannot meet their contractual obligations and wish to be relieved from these obligations will have to notify the other contracting party. At a press briefing held on 30 March 2020, Senior Minister of State for Law Mr Edwin Tong stated that this could be done as simply as by one party sending the other party a text message stating that it is unable to meet its contractual obligations due to the COVID-19 situation.

Importantly, the Bill will also propose an affordable, fast and simple framework for parties to resolve disputes arising from these measures. Panels of assessors will be formed to resolve disputes arising from the measures and a website will also be set up for people to lodge their disputes. It is envisaged that decisions will be given within five days. Importantly, it is also envisaged that parties will not be allowed to be represented by lawyers, there will be no costs orders and decisions made will not be appealable and will be final.

Further, contracting parties will not be allowed to commence legal proceedings against non-performing parties. Neither will they be allowed to impound business assets.

Specific to the construction industry, construction companies will not be liable for liquidated damages or delays arising from COVID-19.

Separately, venue providers such as hotels will not be permitted to forfeit deposits unless an assessor decides otherwise.

In addition to providing relief from contractual obligations, the Bill will introduce temporary relief for individuals and businesses in financial distress.

The individual bankruptcy threshold will be increased significantly from S\$15,000 to S\$60,000. The monetary threshold for company insolvencies will also be increased ten-fold from S\$10,000 to S\$100,000. The statutory period to respond to creditors' demands will be lengthened from 21 days to six months.

Finally, directors will be temporarily relieved from their obligations to prevent their companies trading while insolvent if debts are incurred in the company's ordinary course of business.

COMMENTS

The measures that Parliament seeks to implement by way of the COVID-19 (Temporary Measures) Bill are likely to provide much needed relief to many individuals and entities who have been affected by the COVID-19 pandemic.

On the flipside, relief to one party may well mean difficulties to the other party to a contract.

Consequently, parties should carefully study the Bill (and the resulting Act) to see if they (or their counterparties) qualify for relief. This is important given that the adjudication process envisaged under the Bill will proceed very quickly and will result in final, non-appealable decisions being made in just a few days. Moreover, it appears that the parties will not be required to give formal written notice of their inability to meet their contractual obligations and can simply do so by way of text message. If a party is not up to speed on the scope of the measures, this may result in that party being unable to properly respond when it is provided notice that a counterparty cannot fulfill its contractual obligations as a result of COVID-19 or when it is faced with proceedings under the fast-track framework to deal with disputes arising from the measures. This is especially important for companies such as landlords in large retail malls who may end up having to deal with multiple notices from their tenants at the same time.

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