

Enhancements to the COVID-19 (Temporary Measures) Act 2020 – Two New Categories of Scheduled Contracts, Prohibition on Unilateral Increase of Charges

On 13 May 2020, further enhancements to the COVID-19 (Temporary Measures) Act 2020 (“**Act**”) came into operation. These enhancements relate to two areas:

- (a) First, two new categories of contracts will be treated as “Scheduled Contracts” under the Act; and
- (b) Secondly, additional actions will be prohibited under the Act.

We summarise the key changes below.

Inclusion of two new categories of “Scheduled Contracts”

The COVID-19 (Temporary Measures) Act 2020 (Amendment of Schedule) (No. 2) Order 2020 includes the following categories of contracts as “Scheduled Contracts” under the Act (i.e., certain categories of contracts in respect of which a contracting party may seek temporary relief from performance by reason of the COVID-19 pandemic):

- (a) An option given by a housing developer to an intending purchaser for the purchase of a unit of housing accommodation; and
- (b) An agreement between a housing developer and a purchaser for the sale and purchase of a unit of housing accommodation.

The definition of “housing developer” includes any person that engages in a business of housing development, including the Housing and Development Board.

Parties to the contracts specified above are now eligible to seek temporary relief for inability to perform contracts under Part 2 of the Act by serving a notification for relief (“**NFR**”). Other conditions stipulated under the Act remain applicable, namely:

- (a) The contracts must have been entered into before 25 March 2020;
- (b) The contractual obligations in respect of which relief from performance is sought must be due to be have been performed on or after 1 February 2020; and
- (c) The inability to perform the contractual obligations in question must have been caused to a material extent by a COVID-19 event.

Our previous update on the operation of the Act is available [here](#) and our other COVID-19 related updates are available at [COVID-19 resources](#).

The Ministry of Law (“**MinLaw**”) encourages buyers under such options or agreements to seek an extension as needed from the developer in the first instance before the service of any NFR. The housing developer may

also serve an NFR to seek temporary protection from being sued during the relief period, if it is unable to perform any contractual obligation (which arises on or after 1 February 2020) due to a COVID-19 event.

Inclusion of new prohibited actions

The COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) (Amendment) Regulations 2020 expands on the prohibited actions which the party served with an NFR is prevented from taking during the prescribed period.

The following additional actions are prohibited under the Act:

- (a) Increase of any charges or interest rate for interest payable under a contract unless:
 - (i) The amount of increase is specified in the contract or is to be calculated by reference to a formula or other matter (such as a reference rate) set out in the contract;
 - (ii) The increase relates to a charge that is provided for or permitted in the contract, where such charge relates to recovery of expenses reasonably incurred by the other party to the contract (not being the non-performing party) in the ordinary course of business; or
 - (iii) The non-performing party agrees to the increase;
- (b) Imposition of new charges under a contract without the further agreement of the non-performing party;
- (c) Requiring any part of a security deposit given pursuant to a contract to be replaced by the non-performing party except with the further agreement of the non-performing party;
- (d) Withholding or forfeiture of any part of the booking fee or other consideration paid for an option given by a housing developer to an intending purchaser for the purchase of a unit of housing accommodation; and
- (e) The termination by the housing developer of an agreement between a housing developer and a purchaser for the sale and purchase of a unit of housing accommodation.

MinLaw has clarified that some of the changes specified above were prompted by queries and feedback received since the commencement of the Act. MinLaw's attention was drawn to the fact that some parties have sought to impose additional interest and charges for late payment that are not provided for in their contracts, even though an NFR has been served. The amendments were therefore introduced to expressly prohibit this.

By way of illustration, a landlord who has been served with an NFR would not be permitted to unilaterally increase interest rates or impose new charges (which are not already contractually provided for) on delayed payment in order to prevent or discourage tenants from seeking relief under the Act. However, the landlord would be entitled to impose late payment charges if such charges have already been stipulated in the contract in question.

Concluding Remarks

As with the other sections in the Act, these enhancements to the Act are designed to afford temporary relief to parties who may be unable to perform their contractual obligations as a result of a COVID-19 event. They also allow an opportunity for housing developers and buyers to reach an amicable settlement on the way forward.

If the parties are unable to reach a compromise even after the service of an NFR, either contracting party may make an application for the appointment of an Assessor to determine whether the non-performing party should be entitled to the temporary relief sought.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following:



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