

How Can Contractors Seek Relief Under the COVID-19 (Temporary Measures) Act?

In our previous update, we examined the impact of the newly enacted COVID-19 (Temporary Measures) Act 2020 (“**Act**”) on the construction industry.¹ To recap, the Act provides temporary relief to contractors who are unable to fulfil certain contractual obligations because of COVID-19 event(s).

On 20 April 2020, certain provisions in the Act (including those which deal with temporary relief for inability to perform certain contracts), as well as the *COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020* (“**Regulations**”),² came into effect. The measures specified in the Act and the **Regulations** apply to contractual obligations that are to be performed on or after 1 February 2020 and only for contracts that were entered into before 25 March 2020. The period of relief will be for six months, from 20 April 2020 to 19 October 2020, in the first instance and may be extended to up to a year.

How to Obtain Relief

At the outset, it bears mentioning that the Ministry of Law of Singapore (“**MinLaw**”) encourages parties who are unable to perform their contracts because of a COVID-19 event to first negotiate with the other party to resolve the matter.³

If they require protection from legal proceedings and wish to obtain temporary relief under the Act, they should:

- a) First, confirm that they are eligible for relief. They may visit <http://www.mlaw.gov.sg/covid19-relief> for more information.
- b) Second, serve a Notification for Relief on the other party or parties to the contract, using the prescribed form which is available at <http://www.mlaw.gov.sg/covid19-relief/notification-for-relief>.

Serving the Notification for Relief

For illustrative purposes, take for example, a hypothetical scenario concerning two parties, where Party A is a contractor unable to perform an obligation caused to a material extent by a COVID-19 event and is seeking relief under the Act and the other contracting party is Party B.

For a start, Party A must serve a Notification for Relief on the following, where applicable:

- a) Party B and/or other parties to the contract;
- b) Any guarantor or surety for the obligation in the contract; and

¹ WongPartnership LLP, *COVID-19 (Temporary Measures) Bill – Impact on the Construction Industry in Singapore*, <https://www.wongpartnership.com/insights/detail/covid-19-temporary-measures-bill-impact-on-the-construction-industry-in-singapore> (accessed 21 Apr 2020).

² Singapore Statutes Online, *COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020* (“**Regs**”), <https://sso.agc.gov.sg/SL/COVID19TMA2020-S303-2020> (accessed 21 Apr 2020).

³ Ministry of Law, *COVID-19 (Temporary Measures) Act Provisions relating to Temporary Reliefs to Commence on 20 April 2020*, <https://www.mlaw.gov.sg/news/press-releases/2020-04-20-covid-19-temporary-measures-act-provisions-relating-to-temporary-reliefs-to-commence-on-20-april-2020> (accessed 21 Apr 2020).

- c) The issuer of a performance bond or equivalent for the performance of the obligation (where it has been issued pursuant to a construction contract or supply contract).⁴

The Notification for Relief must contain the following information:

- a) The name, address and telephone number, and email address of Party A and the above parties;
- b) Information about the contract in question;
- c) Information about the subject obligation with a brief explanation of how a COVID-19 event had caused to a material extent the inability to perform the obligation;
- d) Party A's proposal to perform the subject obligation in another manner (if any); and
- e) A declaration by Party A to the effect that all information provided in the notification for relief is true and correct.⁵

Methods of Service

Method 1: For Party A to effect proper service on Party B, Party A may serve its Notification for Relief through the electronic system using [SingPass for individuals](#) or [CorpPass for companies](#).⁶

Method 2: Where Party A is for any reason unable to send the Notification for Relief using the electronic system, Party A should send the Notification for Relief to Party B's last known email address using any other means.⁷

Method 3: If Party A is unable to serve its Notification for Relief by Methods 1 or 2, Party A may send the Notification for Relief through an internet based messaging system and/or a website, where these channels are the means by which Party A corresponds with Party B on matters concerning the scheduled contract in question.⁸

Method 4: If Party A is unable to serve its Notification for Relief by any of the above methods, Party A will have to send the Notification for Relief by prepaid registered post.⁹

Under Methods 2 to 4, Party A will have to serve the Notification for Relief using [Form 1](#) which can be downloaded [here](#) from MinLaw's website.¹⁰

Submitting a Memorandum of Notification for Relief with the Court or Arbitral Tribunal to obtain Stay or Dismissal of Proceedings

In the event that Party A is facing court or arbitration proceedings against Party B at the time or after the Notification for Relief is served, Party A may serve a Memorandum of Notification for Relief with the court or

⁴ See Reg 9(1).

⁵ Form 1 is available on MinLaw's website, <https://www.mlaw.gov.sg/files/Form-1.pdf> (accessed 21 Apr 2020).

⁶ Reg 5(a).

⁷ Reg 5(b).

⁸ Reg 5(c).

⁹ Reg 5(d).

¹⁰ MinLaw, *Notification for Relief*, <https://www.mlaw.gov.sg/covid19-relief/notification-for-relief> (accessed 21 Apr 2020).

arbitral tribunal using Form 2 to seek a stay or dismissal of these proceedings.¹¹ Form 2 can be downloaded [here](#) from MinLaw's website.

Form 2 requires Party A to provide:

- a) Information identifying the proceedings before the court or arbitral tribunal;
- b) A declaration of service of the Notification for Relief which must state when such service was effected;
- c) Method of service of the Notification for Relief; and
- d) A copy of the Notification for Relief.

For matters before:

- a) the High Court, Party A may file the Memorandum of Notification for Relief in the eLitigation case file of the court proceedings under the document title "Other Hearing Related Requests".¹²
- b) a Magistrate's Court or District Court, Party A may file the Memorandum of Notification for Relief via e-Litigation under cover of an "Other Hearing-related Request" to the applicable case.¹³
- c) the Small Claims Tribunals, Party A may file the Memorandum of Notification for Relief by uploading it under "General Application" in the Community Justice Tribunal System.¹⁴

As for arbitration proceedings, Party A should submit the Memorandum of Notification for Relief to the arbitral tribunal.¹⁵

Parties who are not represented by lawyers in any on-going proceedings may approach the LawNet Service Bureau located at Level 1 of the Supreme Court Building during office hours. For more details on filing documents at the LawNet Service Bureau, you may wish to contact their office at (65) 6337 9164 or refer to their website [here](#).

While the Regulations do not stipulate a time-limit as to when Party A should submit the Memorandum of Notification for Relief to the court or arbitral tribunal by, we are of the view that this should be done as soon as possible after the Notification for Relief has been served on Party B.

Application for an Assessor's Determination

If both Party A and Party B are unable to resolve the matter amicably, either party can make an application for an assessor's determination. The application will be made through the Registrar of assessors ("**Registrar**") to the Panel of Assessors for COVID-19 Temporary Relief (PACT), appointed by the Minister for Law.¹⁶

¹¹ Regs 9(4) and 9(5).

¹² Supreme Court of Singapore, *INFORMATION ON FILING A MEMORANDUM OF NOTIFICATION FOR RELIEF OR OTHER PRESCRIBED FORMS UNDER THE COVID-19 (TEMPORARY MEASURES) (TEMPORARY RELIEF FOR INABILITY TO PERFORM CONTRACTS) REGULATIONS 2020*, [https://www.supremecourt.gov.sg/quick-links/visitors/covid-19/information-on-filing-a-memorandum-of-notification-for-relief-or-other-prescribed-forms-under-the-covid-19-\(temporary-measures\)-\(temporary-relief-for-inability-to-perform-contracts\)-regulations-2020](https://www.supremecourt.gov.sg/quick-links/visitors/covid-19/information-on-filing-a-memorandum-of-notification-for-relief-or-other-prescribed-forms-under-the-covid-19-(temporary-measures)-(temporary-relief-for-inability-to-perform-contracts)-regulations-2020) (accessed 22 Apr 2020).

¹³ State Courts of Singapore, *NOTIFICATION OF RELIEF UNDER THE COVID-19 (TEMPORARY MEASURES) ACT 2020 AND ONGOING STATE COURTS PROCEEDINGS*, [https://www.statecourts.gov.sg/cws/NewsAndEvents/Pages/COVID-19-Advisory-NOTIFICATION-OF-RELIEF-UNDER-THE-COVID-19-\(TEMPORARY-MEASURES\)-ACT-2020.aspx](https://www.statecourts.gov.sg/cws/NewsAndEvents/Pages/COVID-19-Advisory-NOTIFICATION-OF-RELIEF-UNDER-THE-COVID-19-(TEMPORARY-MEASURES)-ACT-2020.aspx) (accessed 22 Apr 2020).

¹⁴ *Ibid.*

¹⁵ Regs 9(4) and 9(5).

¹⁶ Reg 14.

Step 1: Applicant Applies for an Assessor's Determination

For example, if Party A (also known as the Applicant) is making an application for an assessor's determination ("**Application**"), the Application must be accompanied by:

- a) A copy of the Notification for Relief;
- b) A copy of the contract or, if there is no written contract, a description of how the contract was made and the relevant terms of the contract; and
- c) Any other supporting documents,

and submitted through the electronic system using [SingPass for individuals](#) and [CorpPass for Companies](#).

Currently, an Application may be submitted at no cost.¹⁷

Step 2: Registrar Reviews Application for an Assessor's Determination

The Registrar will then review the application and if the Registrar is satisfied that the Application is in order, the Registrar will send to Party A:

- a) An acknowledgment of receipt of the Application; and
- b) A response or link to the response form that the respondent(s) (i.e. Party B or the other parties to the contract) must submit to the Registrar.¹⁸

Step 3: Applicant to serve documents on Respondent

Party A must, within two working days after receipt of the items from the Registrar mentioned in Step 2, serve a copy of the Application, together with those items, on Party B (also known as the Respondent).¹⁹

Party A should serve the documents on Party B by email or the other methods of service set out above.

Step 4: Applicant to Submit Declaration of Service

Party A must then, within one working day after service of the copy of the Application and the items from the Registrar on the persons mentioned in Step 3, submit to the Registrar a declaration that Step 3 has been taken.²⁰

Step 5: Respondent to Submit Response

Party B must, within five working days after being served with the documents in Step 3, submit a response to the Registrar and serve the response on Party A.²¹

¹⁷ Reg 14(4).

¹⁸ Reg 14(6).

¹⁹ Reg 14(7).

²⁰ Reg 14(10).

²¹ Reg 15.

Step 6: Registrar to Set Appointment for Hearing

If the Registrar is satisfied that Party A's Application is in order, the Registrar will send to Party A and Party B, by way of email:

- a) A notice of the appointment of an assessor; and
- b) If applicable, a notice of the date and place for the hearing.²²

Step 7: Assessor to Conduct Hearing and Make Determination

An assessor will generally hold hearing(s) by way of email exchange but may also direct the hearing to be held via other electronic means such as video conferencing or have both Party A and Party B to attend a physical hearing before the assessor.²³

Alternatively, the assessor may dispense with a hearing and make a determination solely by reference to the forms and documents submitted by the parties if the assessor is of the opinion that those forms and documents are sufficient for the assessor to make his or her determination.

Step 8: Registrar to Inform Applicant and Respondent of Assessor's Determination

After the assessor has made a determination, the Registrar will inform Party A and Party B of the determination. There will be no appeal against the assessor's determination.

Filing a Notification of Status of Application for Determination with the Court or Arbitral Tribunal

Where Party A, has: (i) lodged a Notification for Relief with the court or arbitral tribunal; and (ii) then applied for an assessor's determination, Party A is required to update the court or arbitral tribunal within two working days by filing a Notification of Status of Application in Form 7 which contains:

- a) Information identifying the proceedings before the court or arbitral tribunal;
- b) A declaration of service of the application; and
- c) A copy of the application.²⁴

Form 7 can be downloaded [here](#) from MinLaw's website.

Further, after the assessor has made a determination or dismissed the Application, Party A is, within two working days, required to provide another update to the court or arbitral tribunal by filing a Notification of Status of Application in Form 7 which contains:

- (a) Information identifying the proceedings before the court or arbitral tribunal; and
- c) A copy of the notice of the assessor's dismissal or determination or a copy of the withdrawal of the application.²⁵

²² Reg 17.

²³ Reg 18.

²⁴ Reg 14(10).

²⁵ Regs 23.

Setting Aside an Assessor's Determination

If, for instance, Party B was absent from the hearing, and had a good reason for being absent, Party B may apply to set aside the assessor's determination. Party B should serve its setting aside application on Party A within five working days after the date of the notice of the assessor's determination.²⁶

If Party A wishes to oppose the setting aside application, it will then have to submit a reply to the Registrar and Party B within a period directed by the Registrar.²⁷

If the assessor decides to set aside the determination, he may do so on such terms as he considers just and may proceed to hear the case and make a fresh determination on the case.²⁸

Concluding Remarks

It is important to note that the reliefs under the Act do not take place automatically. Contractors seeking those reliefs must first serve a Notification for Relief on the other party to kick-start the process. Further, beyond the service of the Notification for Relief, there are also other aspects of the Act and the Regulations which contractors must navigate through, such as the use of the electronic system and the use of the correct prescribed forms to, for example, apply for an assessor's determination or apply for the setting aside of an assessor's determination.

During this period, it is critical that contractors continue to keep comprehensive records on matters such as financial statements, progress reports and programme revisions to support its application for relief under the Act.

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



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²⁶ Regs 20(2) and 20(3).

²⁷ Reg 20(4).

²⁸ Reg 20(5).

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