

COVID-19 (Temporary Measures) Act – Temporary Relief from Legal Action for Leases or Licences of Non-Residential Immovable Properties

1. To complement the financial measures announced in the Resilience Budget on 26 March 2020, the Parliament of Singapore has on 7 April 2020 passed the COVID-19 (Temporary Measures) Bill ("**Bill**") which seeks to offer temporary relief to businesses and individuals from certain contractual obligations due to the COVID-19 pandemic. The Bill is published on the Parliament of Singapore's website and can be found [here](#).

Scope

2. After the COVID-19 (Temporary Measures) Act ("**Act**") is enacted and comes into effect, temporary relief from legal action will be granted to certain categories of contracts, one of which is leases or licences of non-residential immovable properties.
3. However, the temporary relief measures do not apply to contracts entered into or renewed (other than automatically) on or after 25 March 2020. Further, only contractual obligations that have to be performed on or after 1 February 2020 are covered by the Act.
4. The relief provided under the Act is temporary and will be in place for an initial period of six months as prescribed ("**prescribed period**") by the Minister for Law ("**Minister**"). The Minister may extend or shorten the prescribed period, and the period may be extended or

shortened more than once, save that the total duration of the temporary relief provided under the Act must not exceed one year.

How it works

5. The temporary relief under the Act works by imposing a moratorium on the taking of certain actions ("**prohibited actions**") by a contracting party (e.g. the landlord) against the other party (e.g. tenant) ("**non-performing party**") where:
 - (a) the non-performing party is unable to perform an obligation to be performed on or after 1 February 2020;
 - (b) the inability to perform is, to a material extent, caused by a COVID-19 event¹ (e.g. inability to pay rent due to fall in revenue as a result of COVID-19); and
 - (c) the non-performing party has served a notification for relief on the other party or parties to the contract, any guarantor or surety for the non-performing party's obligations in the contract and such other persons as may be prescribed.
6. The list of prohibited actions include, amongst others:
 - (a) the commencement or continuation of an action in court and/or arbitral proceedings

¹ The term "COVID-19 event" has been broadly defined under the Act to mean: (a) the epidemic or pandemic that is COVID-19; or (b) the operation of or compliance with any law of Singapore or another country or territory, or an order or direction of the Government or any statutory body, or of the government or other public authority of another country or territory, being any law, order or direction that is made by reason of or in connection with COVID-19.

- against the non-performing party or its guarantor or surety;
- (b) the termination of a lease or licence of immovable property for non-payment of rent or other moneys; and
 - (c) the exercise of a right of re-entry or forfeiture of a lease or licence of immovable property (e.g. eviction or repossession of the leased premises) or exercise of any other right that has a similar outcome.
7. To apply for relief, a non-performing party must, within a specified period (to be specified under regulations to be made by the Minister), serve a notification for relief that contains prescribed information (to be prescribed under regulations to be made by the Minister) on the other party or parties to the contract, any guarantor or surety for the non-performing party's obligations in the contract and such other persons as may be prescribed (under regulations to be made by the Minister).²
8. Where a notification for relief is served and not disputed, the other party would accordingly be prevented from taking any of the prohibited actions until after the earliest of the following:
- (a) the expiry of the prescribed period;
 - (b) the withdrawal by the non-performing party of its notification for relief;
 - (c) where an application is made to an assessor (see paragraphs 9 and 10 below) and the assessor makes a determination that the case in question is not one where the non-performing party is entitled to relief (e.g. where the inability of the non-performing party to perform the obligation
- is not materially caused by a COVID-19 event).
9. However, where a notification for relief is served and such notice is disputed, the disputing party may, within the period and in the form and manner specified in regulations to be made by the Minister, apply to the Registrar of assessors for the appointment of an assessor to make a determination as to whether the non-performing party should be entitled to the relief. In this regard, there shall be a panel of assessors appointed by the Minister to resolve disputes.
10. In making a determination, an assessor (a) may take into account the ability and financial capacity of the non-performing party to perform the obligation that is the subject of the application, and other prescribed factors (to be prescribed under regulations to be made by the Minister); and (b) must seek to achieve an outcome that is just and equitable in the circumstances of the case and to this end, an assessor may also make further determinations. The determination of an assessor is binding on the parties, and no appeals will be allowed. Parties are to bear their own costs for proceedings before an assessor, and there can be no representations by lawyers before the assessors.
11. It should be noted that under the Act, any person who without reasonable excuse (a) takes a prohibited action where it is not permitted; or (b) fails to comply a further determination made by an assessor, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$1,000.

² The Minister may make regulations under Section 19 of the Act in relation to any specified period, information and persons to be prescribed. Such regulations have not been published as at the date of this article.

12. It should also be noted that where a notification for relief is served, any court proceedings, arbitral proceedings or such other proceedings (as may be prescribed) in relation to the same subject matter of the notification for relief must be stayed once a copy of the notification for relief is lodged with the court, arbitral tribunal or any other person or body before which the other proceedings are brought.

Implications

For Landlords

13. Landlords of non-residential properties can expect to receive notifications from tenants claiming relief from having to pay rent or other obligations under their respective lease or licence agreements.

14. Upon receipt of any notifications for relief, landlords would have to consider whether they wish to dispute such claims for relief. If a landlord decides to dispute a notification for relief, it would have to apply to the Registrar of assessors for the appointment of an assessor to make a determination if the tenant should be entitled to the relief claimed. An application for an assessor's determination must be made within the period and in the form and manner specified in regulations to be made by the Minister. Where a landlord decides not to dispute a notification for relief, the landlord would be prevented from taking any prohibited actions within the prescribed period.

15. Landlords should note that the Act affords relief to tenants not just in respect of their obligation to pay rent during the prescribed period (although it is likely that this would form the bulk of claims for relief from tenants), but also extends to other obligations under the lease or licence agreement which may be

materially affected by a COVID-19 event (e.g. obligation to open and operate premises for certain stipulated hours, in light of the recent government announcement on the closure of workplace premises not offering essential services from 7 April 2020).³

16. Landlords can take the practical approach of working together with their tenants on mutually acceptable arrangements to increase the survivability of tenants as well as their prospects of being in a position to fulfil their obligations after the prescribed period.

For Tenants

17. Tenants should be mindful that temporary relief against prohibited actions only apply where the inability to perform an obligation is to a material extent caused by a COVID-19 event. Therefore, a tenant should first consider if it is able to justify the service of a notification of relief, in case the landlord disagrees with the tenant's claim and applies for the matter to be assessed. As the determination of an assessor is final and cannot be appealed against, an unfavourable determination against the tenant may not only mean the tenant will not be afforded the relief under the Act, but may make it harder for the tenant to then seek other concessions from the landlord.

18. It is also important for tenants to note that the measures are temporary and only intended to provide "breathing space". The measures do not remove a tenant's obligation to perform the relevant obligation. For example, where a tenant is afforded temporary relief to pay rent during the prescribed period, after the prescribed period is over, the tenant would still be liable for the deferred rent which had accrued during the prescribed period.

³ See: <https://www.moh.gov.sg/news-highlights/details/circuit-breaker-to-minimise-further-spread-of-covid-19>

As the situation in relation to the COVID-19 pandemic is evolving, landlords and tenants should keep abreast with the latest advisories /

press releases / materials issued by the relevant ministries and government agencies.

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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