

## Effect of the Covid-19 (Temporary Measures) Act on construction contracts in Singapore

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CATEGORY:  
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The COVID-19 (Temporary Measures) Act (**'Act'**) offers temporary relief to businesses and individuals who are unable to fulfil their contractual obligations due to the unprecedented effects of the pandemic. The measures cover contractual obligations that are to be performed on or after 1 February 2020, and for scheduled contracts that were entered into or renewed before 25 March 2020. Some of the scheduled contracts include construction and supply contracts, performance bonds and lease or licence of non-residential immovable property.

The reliefs under the Act are in addition to the rights of parties to rely on [force majeure](#) clauses in the construction contracts, or on the doctrine of frustration.

### Construction industry

On 3 April 2020, the Ministry of Trade and Industry suspended all non-essential activities at workplace premises to reduce the risk of further local transmission of COVID-19 until 4 May 2020. As a result, delays to the completion of works are expected as works on most projects screech to a halt to comply with the new circuit breaker measures.

### General relief

The Act provides temporary relief for a party who is unable to perform its contractual obligation (the **"Defaulting Party"**) due to a material extent to a COVID-19 event. The Act prohibits certain actions from being taken against the Defaulting Party. These include:

1. Commencing or continuing court and insolvency proceedings or arbitration proceedings against the Defaulting Party;
2. Enforcement of security over immovable as well as movable property that is used for the purpose of business or trade (e.g. plant and machinery);
3. Calling on a performance bond given pursuant to a construction contract (see below); and
4. Terminating of a contract for lease or licence of immovable property for non-payment of rent or other moneys.

The party seeking relief must, within a prescribed time frame, serve a notification for relief (**'Notification'**) on the other party. This must be done whether or not the other party has made a prior demand for performance, and must contain information on:

1. The other party or parties to the contract;
2. Any guarantor or surety for the obligations in the contract; and
3. Any other persons as may be prescribed.

### Relief in respect of performance bonds

A party in whose favour a performance bond is made may not make a call on the performance bond if the default is materially caused by COVID-19 until at least 7 days before the performance bond expires.

However, the Act also allows the party furnishing the bond to extend the expiry date of the performance bond. To do so, the furnishing party must :

1. Issue and serve a notification for relief in the prescribed form and manner under the Act ;
2. Apply to the issuer for extension not less than 7 days before the date of expiry of the performance bond; and
3. Serve a notice of the application made on the other party.

Upon satisfying these conditions, the performance bond is automatically extended to a date that is 7 days after the end of the prescribed period or a date agreed upon by parties and the issuer .

## Determination of disputes

If parties do not agree whether reliefs are applicable, they may apply to the Registrar of Assessors ( '**Registrar**') for the dispute to be determined by an Assessor . In the proceedings before the Assessor:

1. No party may be represented by a lawyer ;
2. Each party will bear their own costs ;
3. The Assessor's determination is binding on all parties to the application ; and
4. There is no right of appeal against the determination of the Assessor .

The procedure for determination by an Assessor is as follows:

1. An application must be made in the form and manner specified by the Regulations and must be accompanied by the prescribed fee ;
2. The application must be served as prescribed;
3. The Registrar will serve a notice of appointment of the Assessor to all parties .

In making his/her determination on whether the reliefs apply to the non-performance, the Assessor :

1. May consider the ability and financial capacity of the Defaulting Party to perform the obligation and other prescribed factors; and
2. Must seek to achieve an outcome that is just and equitable in the circumstances of the case.

The Assessor may make further determinations, including (but not limited to) requiring a party to do anything or pay any sum of money to discharge any obligations under the contract . Such further determination may be enforced in the same manner as a judgment or order of court . Failing to comply with the Assessor's determination is a criminal offence .

## How we can help

The economic impact of COVID-19 is expected to far outlast the public health impact. As it is, the reliefs under the Act may last for a prescribed period of up to 6 months and is subject to extension or shortening by the Minister, which gives us a hint as to the expectations of Parliament.

These are some of the areas we can assist you in:

1. Advising if reliefs are available to your contracts;
2. Preparing notification for relief in the prescribed form and manner;
3. Preparing an application to the Registrar for determination by an Assessor in the prescribed form and manner;
4. Assisting you to prepare submissions for the application for relief, or to contest the application for relief before the Assessor, and advising on the procedure; and
5. Making an application to Court for the enforcement of an Assessor's determination.

[Click here](#) for more insights on the Singapore Covid-19 (Temporary Measures) Act 2020.

# Authors

Tan Spring

PARTNER | SINGAPORE

Litigation and arbitration

 +65 6238 3200

 [tanspring@witherskhattarwong.com](mailto:tanspring@witherskhattarwong.com)

Theodore Ang

ASSOCIATE | SINGAPORE

Litigation and Arbitration

 +65 6238 3350

 [theodoreang@witherskhattarwong.com](mailto:theodoreang@witherskhattarwong.com)