

# COVID-19 (Temporary Measures) Act 2020

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COVID-19 RESOURCES

On 7 April the parliament passed two important pieces of COVID-19 legislation:

- a) the COVID-19 (Temporary Measures) Act 2020 (“The Act”) April 2020. The Act provides temporary relief to those affected by the COVID-19 pandemic, and gives the government powers to make control orders; and
- b) the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (“Control Order”). The Control Order, issued pursuant to the Act, prohibits all social gatherings from 7 April 2020 to 4 May 2020.

This article summarizes the key features of the Act and the Control Order.

## THE ACT

### (A) Temporary relief from Contractual Obligations

The bill offers temporary relief to businesses and individuals who are unable to fulfill their contractual obligations due to the COVID-19 situation, by shielding them from certain legal action by their counterparties for six-months.

#### *When do the measures come into effect, and how long will they last?*

The measures have not come into operation yet. The Ministry of Law will prescribe a period not exceeding 6 months, which may be extended.

#### *Who does it help?*

The Act protects parties who had:

- a) entered into a contract before 25 March 2020;
- b) are contractually obliged to perform on or after 1 February 2020; and
- c) are unable to perform, “materially due” to COVID-19, or due to the government measures put in place as a result of COVID-19.

Only the following categories of contracts will be covered under the bill:

- a) Leases or licences for commercial (non-residential) units;
- b) Construction contracts, supply contracts, and a performance bond or equivalent that is granted pursuant to a Construction contracts or supply contract;
- c) Loan facilities by banks and finance companies to SMEs<sup>1</sup>, which are secured against any commercial or industrial property in Singapore, or against any plant, machinery or fixed asset located in Singapore or used for manufacturing, production or other business purposes;
- d) Hire-purchase agreements and conditional sales agreements for commercial vehicles, or for plant, machinery or fixed asset located in Singapore or used for manufacturing, production or other business purposes

<sup>1</sup>a company with not less than 30% of its shares held by Singapore citizens or PRs, and with a turnover less than SGD 100 million in the latest financial year

- e) Events-related contracts relating to Events (e.g. weddings); and
- f) Tourism-related contracts.

### ***What relief does it provide?***

The Act does not remove a party's contractual obligations. However, it prevents the other party from taking the following actions, during the period when the Act is in force:

- a) take out court proceedings and domestic arbitrations;
- b) enforce a judgment, or a domestic arbitration award, or a determination under the Building and Construction Industry Security of Payment Act, or commence or levy execution, distress or other legal process;
- c) terminate a commercial lease for non-payment and exercise the right of re-entry or forfeiture;
- d) enforce any security over immovable property or over property used for the purpose of a trade, business or profession, or reposses goods used in any trade, business or profession, under a hire-purchase, or retention of title agreement;
- e) apply for the party to be wound up, or made bankrupt, or applying for judicial management, or a scheme of arrangement, or appointing receivers or managers;

In addition, for Event and Tourism-related contracts, affected parties will not have their deposits forfeited unless it is just and equitable.

### ***How does it work?***

Parties seeking relief must submit a notification for relief to the other party.

Upon receiving the notification for relief, the other party cannot take any prohibited action against the party seeking relief, and existing proceedings must be stayed. However, the other party may apply for an Assessor to decide whether the non-performance was caused by COVID-19.

The Assessment is meant to be a quick and cost-effective process. Parties will represent themselves before the Assessor and there is no appeal from the Assessor's determination.

## **(B) Additional Measures for Construction Contracts and Events Contracts**

The Act has provided additional relief for inability to perform construction contracts or supply contracts, and events contracts.

In addition to being able to avail themselves of the moratorium, a party in breach of a construction contract or supply contract will not have its performance bond called on by the other party at any time earlier than 7 days before the date of expiry of the performance bond, and has the ability to force the bond issuer to extend the expiry date of the performance bond.

For more information on the effect of the Act on Construction Contracts, see <https://blogs.duanemorris.com/duanemorrisandselvam/2020/04/05/dealing-with-covid-19-in-the-construction-industry/>

For Event and Tourism-related contracts, affected parties will not have their deposits forfeited unless it is just and reasonable to do so as determined by an assessor. If the deposits have already been forfeited between 1 February 2020 and the date of commencement of the Act, the amount must be refunded to the party by the other party upon receipt of a Notification for Relief.

For more information on the effect of the Act on Event and Tourism-related contracts, see <https://blogs.duanemorris.com/duanemorrisandselvam/2020/04/02/what-can-i-do-when-my-singapore-weddings-stuck-in-covid-19-limbo/>

### **(C) Transfer of Property Tax Benefits to tenants**

Aside from the temporary relief from rental payment, one key aspect of the Act is to compel the owner of properties that have been leased out to transfer the benefit of any remission of property tax given by an order made under the Property Tax Act in response to COVID-19 to its tenants.

This means that if the owner is given any refund for any property tax paid or is relieved from any liability to pay any property tax, it must pass this benefit to the tenants. This can be done by either a payment of money (lump sum or instalment) or an off-set of reduction of the rent payable by the tenant to the owner.

The remission must be passed to the tenant without any conditions and any conditions, if imposed, will be void. The Act makes it an offence for owners who fail to pass the benefits they enjoy without reasonable excuse. Upon conviction, the owners who have breached their obligation to pass the benefit to their tenants will be liable for a fine not exceeding S\$5,000.

Any disputes arising from the transfer of benefit of the remission between the owner and the tenant are to be resolved by a Valuation Review Panel comprised of one or three persons as determined by the Chairman of the Valuation Review Board.

This measure is targeted at helping the tenants who are facing financial difficulties and mandating the sharing of benefits received by owners. This sharing of benefits will hopefully help the tenants to eventually meet their rent payments after the prescribed moratorium is over.

### **(D) Insolvency and Bankruptcy**

The bill will make it harder for individuals and business to be made bankrupt and insolvent.

#### *Individuals:*

- a) monetary threshold for bankruptcy applications increases from \$15,000 to \$60,000;
- b) time period to satisfy a statutory demand increases from 21 days to 6 months; and
- c) monetary threshold for the Debt Repayment Scheme increases from \$100,000 to \$250,000.

#### *Businesses:*

- a) monetary threshold for bankruptcy applications increases from \$10,000 to \$100,000; and
- b) time period to satisfy a statutory demand increased from 21 days to 6 months.

These changes will come into force on a date to be announced by the Ministry of Law. The changes will not apply to statutory demands or bankruptcy applications made or served before the date that date.

### **(E) Comments**

The Act will provide much needed relief for many industries and individuals, that would be unable to escape their contractual obligations through the common law doctrine of frustration, or avail themselves of a Force Majeure Clause.

For example, F&B outlets that are continuing their operations during this period, as they have not been prohibited from operating under the current COVID-19 measures, are likely to experience a drastic decrease in revenue due to reduced footfall and may be unable to pay their rents from March 2020 can benefit from these temporary reliefs. The Act will prevent landlords from terminating the restaurant's lease, or commencing court action against the restaurant during this period.

Construction companies will not be liable for liquidated damages for delays arising from lack of manpower, supplies, or cash flow during this period, and will be able to avoid the much-dreaded performance bond calls.

However, companies must be mindful that the measures are not intended to remove contractual obligations. While the landlords would not be able to repossess the property during the relevant period, rent continues to accrue, along with (presumably) any agreed interest. Therefore, it is critical that affected individuals and businesses use the time to obtain suitable funding.

Parties must also be prepared that the Assessors may not agree with them on the definition of “materially caused by COVID-19” as the process is intended to fast and simple one, and not a detailed examination of the merits.

On the other hand, businesses must be prepared that they may be adversely affected when their own counterparties seek to rely on the Act. For example, a main contractor with a project deadline of 1 January 2021 may find himself in a position where his sub-contractors miss their deadlines in August 2020, but he is unable to compel performance through legal action. They will also have to continue paying for their sunk costs, such as labour.

It is also unclear at this moment how the bill will interact with other remedies available to contracting parties, such as frustration, force majeure and variation. However, it is likely that these will continue to operate in parallel. Given the temporal nature of the measures, it is likely that these remedies will continue to play an important role.

## THE CONTROL ORDER

The Control Order places restrictions on the movement of people within and outside their ordinary place of residence. The Control Order will be in force between 7 April 2020 and 4 May 2020, and will remain in force until its expiry or its revocation, whichever occurs first. Persons who contravene a control order without reasonable excuse commits an offence and will be liable to a fine not exceeding \$10,000 or imprisonment of up to 6 months or both.

### (A) Restriction of Movement

The Control Order prohibits a person from meeting any individual not living in the same residence for any social purpose.

An individual may not leave his residence except where necessary for the following purposes:

- (a) to work for or with an essential service provider, a specified school or an early childhood development centre;
- (b) to procure any goods or services from an essential service provider or a specified school;
- (c) to obtain (i) medical treatment for a suspected COVID-19 infection or (ii) medical treatment of a pressing nature;
- (d) to exercise in an open air stadium, public path or public park alone or with any other individual who he/she lives with;
- (e) where an individual works for or with an essential service provider, to bring the individual's child or children to a place where the child or children are to be cared for;

- (f) to assist with the daily needs of any individual who has a physical or mental disability, or is below 12 years of age or above 60 years of age;
- (g) to report for enlistment or service under the Enlistment Act;
- (h) to report to any law enforcement officer or to attend at any court in accordance with any warrant, summons or order made under any written law or order of a court;
- (i) to be present at any place in accordance with a requirement under any written law;
- (j) to seek or render help in an emergency;
- (k) to move to another place of accommodation;
- (l) to leave Singapore; and
- (m) to do anything reasonably connected with and for the purposes of the above-mentioned purposes.

An individual is also barred from allowing any other individual to enter his or her residence except:

- (a) for the purposes of enabling the provision or supply of any essential service at the residence;
- (b) for the purposes of providing child care, where the individual works for or with an essential service provider;
- (c) to receive assistance for daily needs, in relation to any individual who has a physical or mental disability, or is below 12 years old or above 60 years old; or
- (d) to receive help in an emergency.

Individuals who leave their residence for the permitted purposes are required to keep a safe distance from others. For example, individuals must keep at least one metre away from other individuals in any public place or common property of any subdivided building except in (i) any lift, (ii) any motor vehicle, or (iii) any premises used in connection with the provision of public transport. Further, individuals are barred from using any sports or recreation facilities, except in an open-air stadium or a public park.

#### **(A) For Businesses**

The Control Order requires every person to work only from their own home, and without meeting any other individual, unless they are an essential service provider or a worker of an essential service provider.

Essential service providers that are allowed to carry on business, such as healthcare, transport, food and beverage establishments, supermarkets and waste collection and disposal services must comply with all safe distancing measures. The complete list of essential services is published and updated at <https://covid.gobusiness.gov.sg/essentialservices/>.

Businesses may apply for a General Exemption or a Limited-Time Exemption at <https://covid.gobusiness.gov.sg/>

The Control Order empowers the Minister of Health to close “any premises other than residential premises” to manage the spread of COVID-19. The wording of the section is broad and include premises such as workplaces, schools, places of worship and recreational facilities.

## (B) For Dormitories

The Control Order provides specific requirements for specified dormitories. In particular, operators of a specified dormitory must take all reasonable steps to ensure that:

- (a) each individual does not leave the dormitories except to (i) obtain medical treatment or an essential service, (ii) work for or with an essential service provide; or (iii) with permission or directions to do so;
- (b) records are kept of each individual who leaves the dormitory and the purpose for leaving the dormitory;
- (c) the body temperature of each individual is taken and an assessment of any symptom is made for every individual entering or leaving the dormitory;
- (d) individuals are kept at least one metre away in areas within the dormitory that is outside of the individual's room;
- (e) any individual who is febrile or exhibiting a specified symptom to (i) wear a mask and (ii) isolated from other individuals;
- (f) any individual who is febrile or exhibiting a specified symptom to obtain medical treatment as soon as practicable;
- (g) no gatherings or events in the dormitory;
- (h) all shared facilities are closed other than a bathroom, toilet, or cooking and eating facilities; and
- (i) the dormitory is kept in a safe and sanitary condition.

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