

# Loan Obligations: Relief Measures During the COVID-19 Pandemic

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COVID-19 RESOURCES

A package of targeted relief measures was announced by the Monetary Authority of Singapore (MAS) on 31 March 2020, which it has rolled out together with the Association of Banks in Singapore, the Life Insurance Association, the General Insurance Association and the Finance Houses Association of Singapore to provide temporary relief for individuals and small- and medium-sized enterprises (SMEs) facing liquidity problems during this period of the COVID-19 pandemic. In the face of a collapsing world economy, these measures could prove to be a lifeline to starve off bankruptcy and winding-up actions.

Although the package has three components to it, individual borrowers will be particularly interested in the first component which is targeted to help individuals meet their loan and insurance commitments. The second component aims to support SMEs with continued access to bank credit and insurance cover, whilst the third ensures well-functioning and liquid interbank funding markets.<sup>1</sup> This article will focus on loan commitments.

## A. Individuals with Residential Property Loans

Individual home owners who are temporarily cash-strapped during this period may opt to defer either the principal payment or both the principal and interest payments of their residential property loans up to 31 December 2020. The relief is not automatic, however, and borrowers will have to apply to their respective lenders for deferment of repayments. To qualify for the deferment, borrowers need not show any adverse impact from COVID-19. Lenders will approve the request for deferment as long as the individual is not in arrears for more than 90 days as at 6 April 2020.

Individuals should carefully assess their financial positions before opting into the scheme. This is because ultimately, they may end up paying more. Deferring the principal payment does not stop the interest running. Interest will continue to accrue albeit only on the deferred principal amount; there is no compounding of interest in that no interest will be charged on the deferred interest payments. It would be prudent for individual borrowers, when applying for deferment, to explore and seek the assurance from their respective lenders as far as possible that (i) their personal credit rating will not be adversely impacted by such deferment; (ii) all other attendant fees and charges (including late payment charges) that the lenders would otherwise be entitled to impose would be waived for the corresponding period of deferment; and (iii) the applicable interest rates on the loans will remain unchanged and even extended for the duration corresponding to the principal deferment period.

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<sup>1</sup> Refer to MAS's announcement for more information on the relief measures: <https://www.mas.gov.sg/news/media-releases/2020/mas-and-nancial-industry-to-support-individuals-and-smes-affected-by-the-covid-19-pandemic>.

## B. Individuals with Unsecured Credit Facilities

Interest rates typically charged on credit cards can be as high as 26%. Naturally, outstanding balances on credit cards should be managed wisely. However, for individuals who have had to resort to unsecured credit facilities from banks or other credit card issuers to tide things over, there is the option to convert such outstanding balances to term loans at a much-reduced interest rate capped at 8%. Depending on the individual's financial circumstances to meet the minimum monthly repayments, the repayment period for such term loan is up to five years.

This relief measure is targeted at individuals who have suffered a loss of 25% or more of their monthly income after 1 February 2020 and are at risk of incurring substantial arrears. Such individuals may choose to opt in to the scheme by applying to their lenders from 6 April till 31 December 2020 to convert their outstanding unsecured debt.

## C. SMEs with Secured Term Loans

Similar to individuals, SMEs with secured term loans and facing temporary constraints on their cashflow during this period may opt to defer principal payments on their secured term loans up to 31 December 2020. SMEs may also extend the tenure of their secured term loans by up to the corresponding period of deferment of principal repayments. However, in order to qualify for such relief, the SMEs must meet the following criteria:

- They must continue to make interest payments on the loans;
- They must not be more than 90 days in arrears as of 6 April 2020 and be in good standing with their lenders.
- The quality of their security must stand up to scrutiny by the lenders.

Affected SMEs looking for other targeted and direct financial relief may also approach banks and finance companies which remain committed to working with them on adjusting loan repayment schedules for other types of loan facilities besides secured term loans.

## D. Temporary Relief under COVID-19 (Temporary Measures) Act 2020 ("the Act")

Where one party to a scheduled contract is unable to perform or meet an obligation in the contract and the inability is largely due to a COVID-19 event, the other party to the contract may not take any enforcement action against the first party in relation to such inability for the prescribed period of six months commencing on 20 April 2020.<sup>2</sup> In effect, the enforcement of such contractual obligations is suspended for six months. To avail itself of this relief, the first party must have served a prescribed notification for relief to the other party(ies) to the contract, any guarantor of the obligation and such other person as prescribed. The other party may challenge such notification by applying for appointment of an assessor to determine whether the case is one that merits relief under the Act.

To qualify for relief, an obligation must first and foremost be contained in a scheduled contract. A scheduled contract under the Act as it relates to secured loan refers in particular to:<sup>3</sup>

- (a) a contract for the grant of a loan facility by a bank licensed under the Banking Act (Cap. 19) or a finance company licensed under the Finance Companies Act (Cap. 108) to an enterprise, where such facility is secured, wholly or partially, against any commercial or industrial immovable property located in Singapore;

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<sup>2</sup> COVID-19 (Temporary Measures) Act 2020, sections 3 and 5 read with the COVID-19 (Temporary Measures) (Prescribed Period) Order 2020 which came into operation on 20 April 2020.

<sup>3</sup> COVID-19 (Temporary Measures) Act 2020, The Schedule, para 1(a) & (b).

(b) a contract for the grant of a loan facility by a bank licensed under the Banking Act or a finance company licensed under the Finance Companies Act to an enterprise—

- (i) where such facility is secured, wholly or partially, against any plant, machinery or fixed asset located in Singapore; and
- (ii) where such plant, machinery or fixed asset (as the case may be) is used for manufacturing, production or other business purposes.

The six-month prohibition from taking any prescribed enforcement action for such class of scheduled contracts is restricted to secured loans made to an enterprise as defined in the Act and further limited to selected security over commercial or industrial immovable property locally situated mentioned in sub-paragraph (a) or plant, machinery or fixed asset locally situated mentioned in sub-paragraph (b), or the part of the obligation that is secured by such security.<sup>4</sup>

To qualify as an enterprise under the Act, an SME must be:<sup>5</sup>

a body corporate or unincorporate that is incorporated, formed or established, and carries on business, in Singapore, where –

- (a) not less than 30% of its shares or other ownership interest is held by citizens of Singapore or permanent residents of Singapore or both; and
- (b) the turnover of the group (within the meaning of the Accounting Standards applicable to it) to which it belongs does not exceed \$100 million in the latest financial year.

Proscribed actions in relation to such security include commencement or continuation of an action in a court against the first party (most likely to be the borrower) or his guarantor or surety, enforcement of any security over any immovable property, enforcement of any security over any plant and machinery used for the purpose of a trade, business or profession, and insolvency and winding-up proceedings. Other than the suspension of enforcement, the contractual rights of banks and finance companies, in particular to charge fees and interest for non-payment or late payment of loan obligations due and the right of set-off are not affected. Negotiation with banks and finance companies for deferment of payment of the principal amount of the loan will not be complete unless it includes a waiver of late charges and penalty interest so as to contain the escalation of the overall loan amount. Credit rating of the SME/enterprise must also be safeguarded for the future.

An SME that does not qualify as an enterprise under the Act will not be afforded temporary relief and protection under the Act for its loan agreement. Unsecured loans and loans secured by assets other than those selectively mentioned in the Act do not qualify as scheduled contracts and are not protected by the Act. A contractual obligation that was to have been performed before 1 February 2020 is also beyond the scope of the Act.

The other major relief for individuals and businesses under the Act is that it will be that much harder for lenders to make them bankrupt and insolvent due to the significant increase in the monetary threshold to be met and lengthening of the time period for borrowers to satisfy a statutory demand.

Given the severity of the spread of the COVID-19 pandemic and the devastating impact on the world economy, the initial prescribed period of six months may be a little too soon to hope for a recovery if a protracted global recession takes place.

We believe that the Singapore Government will take the necessary measures to deal with worsening economic conditions and help Singaporeans tide over their cash flow issues where needed so

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<sup>4</sup> COVID-19 (Temporary Measures) Act 2020, section 5(6) read with The Schedule, para 1(a) & (b). <sup>5</sup> COVID-19 (Temporary Measures) Act 2020, The Schedule.

that there may be additional relief that will be forthcoming. In any event, the prescribed period under the Act may be extended, if necessary, more than once subject to conditions.<sup>6</sup>

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### **For More Information**

If you have any questions about this *Alert*, please contact Leon Yee, Zabrina Abdul Hamid, any of the attorneys in our Singapore office or the attorney in the firm with whom you are in regular contact.

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<sup>6</sup> COVID-19(Temporary Measures) Act 2020, section 3(2) & (3).