

COVID-19 (Temporary Measures) Bill

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COVID-19 RESOURCES

According to a press release by the Ministry of Law on 1 April 2020, the Singapore government will introduce a new bill known as the COVID-19 (Temporary Measures) Bill in Parliament next Tuesday, on 7 April 2020.

This article summarises the likely key features of the bill, based on currently available sources, and some of our thoughts.

Contractual Obligations

The bill seeks to offer targeted, temporary relief to businesses and individuals who are unable to fulfill their contractual obligations due to the COVID-19 situation.

How long will the measures last?

The measures will last until 6 months from the commencement date but may be extended for a further 6 months.

Who does it help?

The bill protects contracting parties who are contractually obliged to perform a contract on or after 1 February 2020, and are unable to do so. The inability must be materially caused by COVID-19, and the contracts must have been entered into before 25 March 2020.

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

- a) Leases for commercial units.
- b) Construction and supply contracts;
- c) Events-related contracts relating to Events (e.g. weddings);
- d) Tourism-related contracts; and
- e) certain Loan facilities granted by a bank or a finance company to SMEs, and certain hire-purchase Agreements.

What relief does it provide?

The bill does not remove contractual obligations but only suspends the enforcement of those obligations until the end of the six months or such later date that may be extended.

During this period, contracting parties will be protected from the following:

- a) court and insolvency proceedings;
- b) enforcement of security over their property;
- c) calls on a performance bond given pursuant to a construction contract; and
- d) termination of leases of non-residential premises.

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. The notification can be a simple message stating "I can't afford to pay because of...".

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.

Any dispute to be determined by an Assessor from a pool of Assessors appointed by the Minister for Law, who will decide if the non-performance was due to a COVID-19 event and will have powers to grant relief. Parties will represent themselves before the Assessor and there is no appeal from the Assessor's determination.

Insolvency

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.

Comments

The bill 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, but 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 bill 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 bill. 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.

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.

If you have any questions about this update, please feel free to contact

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