

Summarising the Covid-19 (Temporary Measures) Act 2020 for Commercial Landlords

10 April 2020

Introduction

1. This article is part of a series of updates¹ on the COVID-19 (Temporary Measures) Act 2020 (the “**Act**”)², which inception was announced on 1 April 2020 and urgently passed by Parliament on 7 April 2020.
2. The wide-ranging Act provides temporary, targeted relief to alleviate the immense pressures caused by the COVID-19 pandemic on individuals, firms and businesses across various sectors. This article focuses on commercial landlords, and covers the following areas (*click on any of the 6 sections below to go directly to these sections*):-
 - 2.1. [Pre-requisites to Temporary Reliefs](#)
 - 2.2. [Types of Temporary Reliefs Available](#)
 - 2.3. [Temporary Relief Period](#)
 - 2.4. [Consequences of Contravention](#)
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¹ General update on the Act at its inception: <https://www.eversheds-harryelias.com/content/e-briefing-6-month-breather-non-performance-contractual-obligations-due-covid-19-pandemic>

Construction Industry: <https://www.eversheds-harryelias.com/content/e-briefing-summarising-covid-19-temporary-measures-act-2020-construction-industry>

Employment / Workplace: <https://www.eversheds-harryelias.com/content/e-briefing-suspension-activities-workplace-premises-7-april-2020>

The Government’s Solidarity and Resilience Budget Measures: <https://www.eversheds-harryelias.com/content/e-briefing-summary-solidarity-and-resilience-budget-measures>

² The Act can be found at <https://sso.agc.gov.sg/Acts-Supp/14-2020/>

Pre-requisites to Temporary Reliefs

3. Part 2 of the Act provides temporary reliefs to a “scheduled contract” entered into or renewed **before 25 March 2020**³, which includes leases or licenses for *non-residential* immovable property.⁴
4. The temporary relief provisions apply when the following requirements in Section 5(1) of the Act have been satisfied:-
 - 1.1. A party (“**Party A**”) to a scheduled contract is unable to perform a contractual obligation that is to be performed on or after 1 February 2020;
 - 1.2. The inability to perform is to a material extent caused by a COVID-19 Event (“**Subject Inability**”); and
 - 1.3. Party A has served a notification for relief in accordance with Section 9(1) of the Act (“**Temporary Relief Notification**”) on (i) the other party or parties to the contract (“**Party B**”), any guarantor or surety for Party A’s obligation in the contract and (iii) any other prescribed person.
5. A COVID-19 Event is defined as:-⁵
 - 5.1. the COVID-19 epidemic or pandemic; or
 - 5.2. the operation of or compliance with laws, orders or directions (in Singapore or elsewhere) made by reason of or in connection with COVID-19.
6. At the moment, the form and procedure for issuing the Temporary Relief Notification in accordance with Section 9(1) of the Act have **not** been specified by the Minister for Law under Section 19(1) of the Act.

³ Section 4(1) of the Act

⁴ Paragraph 1(h), The Schedule of the Act

⁵ Section 2 of the Act

Types of Temporary Reliefs Available

7. If the above requirements are satisfied, Party A can seek temporary reliefs to prohibit Party B from taking any of the following actions⁶ (collectively “**Temporary Reliefs**”), amongst others:-
 - 7.1. Commencing or continuing court or arbitration proceedings against Party A (or Party A’s guarantor/surety), which is effectively a stay of proceedings;
 - 7.2. Enforcing a Court judgment or arbitral award;
 - 7.3. Enforcing any security over immovable property, or movable property used for the purpose of a trade, business or profession;
 - 7.4. Applying for schemes of arrangement / judicial management / winding up / bankruptcy in relation to Party A (or Party A’s guarantor/surety);
 - 7.5. Appointing a receiver or manager over any property or undertaking of Party A (or Party A’s guarantor/surety);
 - 7.6. Commencing or levying of execution, distress or other legal proceedings against the property of Party A (or Party A’s guarantor/surety), except with leave of Court;
 - 7.7. Termination of a scheduled contract (being a lease or licence of immovable property) where the Subject Inability is the non-payment of rent or other moneys; and
 - 7.8. The exercise of a right of re-entry or forfeiture under a scheduled contract (being a lease or licence of immovable property), or the exercise of any other right that has a similar outcome.
8. For leases and licenses, an example of a contractual obligation that may be materially affected by the COVID-19 Event would include the tenant/licensee’s ability to make payment of rent, licence fees or other moneys under the lease/licence agreement, as the tenant’s revenue and cash flow had been adversely affected by COVID-19.

⁶ Section 5(3) of the Act

9. However, Section 5 of the Act does not affect the taking of any other action in relation to the Subject Inability, including an action pursuant to the Frustrated Contracts Act (Cap. 115) or a force majeure clause in the contract where applicable.⁷ Also, Party B may still pursue against Party A for such non-performance of the contract arising before 1 February 2020, or not materially caused by COVID-19 Event. For example, if a portion of the rental arrears had accrued before 1 February 2020, the Landlord may still exercise its rights of re-entry and forfeiture under the Lease Agreement in respect of the rental arrears that had accrued before 1 February 2020.
10. At present, Section 5 does not have retroactive application, and applies to any action by Party B after the commencement of the Act, which is 7 April 2020. This may be contrasted against Section 7(3) which applies even to deposits that have already been forfeited between 1 February 2020 and commencement of the Act. However, the Minister may arguably have the power to issue regulations for retroactive application because the authorising provision in Section 19(1) of the Act is widely worded, which allows the Minister to issue any regulation that is “*necessary or convenient*” for carrying out or giving effect to the Act. Further, Section 19(2)(f) when read with Sections 9 and 5(4), allows the Minister to expand the definition of “*scheduled contracts*”.

Temporary Relief Period

11. The Temporary Reliefs will last until the *earliest* of any of the following (“**Temporary Relief Period**”):-
 - 11.1. The expiry of the period to be prescribed⁸ by the Minister for Law (“**Prescribed Period**”), which can be up to 6 months⁹, and can be extended by the Minister up to one year¹⁰;
 - 11.2. Party A withdraws the Temporary Relief Notification; **or**

⁷ Section 5(13) of the Act

⁸ At present, the Minister has not issued a notification in the *Government Gazette* on when the Prescribed Period will commence and its duration, although it is expected to be released soon

⁹ Section 3(1) of the Act

¹⁰ Sections 1(2) and 3(2) of the Act

- 11.3. An assessor determines that Party A's application for Temporary Relief was not one to which the Act applied.
12. The Temporary Reliefs are only a *suspension* of the contract for the Temporary Relief Period. It does not cancel contracts or abrogate any rights. In other words, in the words of the Minister: "*there is a deferral of rental obligations, but the rental obligations do not go away; rent will continue to accrue.*"¹¹ Hence, whatever is owed and due during the Temporary Relief Period will immediately become due and payable in full to Party B at the end of the Temporary Relief Period. This may pose commercial problems subsequently, as noted by REIT Association of Singapore (REITAS): "*it is also not realistic to expect our tenants to accumulate 6 months of rent and promptly pay the landlord thereafter.*"¹²
13. Further, upon Party A serving the Temporary Relief Notification, any **statutory limitation period** will be extended for the duration of the Temporary Relief Period.¹³
14. The Minister has confirmed that, despite the Temporary Reliefs, landlords are permitted to set off the security deposits that they have for the amounts due during the Temporary Relief Period.¹⁴

Consequences of Contravention

15. Any party that contravenes any of the above Temporary Reliefs after receiving a valid Temporary Relief Notification shall be liable on conviction to a fine not exceeding \$1,000, unless that party had a reasonable excuse in doing so.¹⁵
16. Additionally, any proceedings in breach of the Temporary Reliefs will be dismissed upon lodgement of the Temporary Relief Notification with the court/arbitral tribunal.¹⁶

¹¹ See 29:41 to 29:50 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

¹² See https://www.reitas.sg/wp-content/uploads/2020/04/Media-release_6-Apr-2020_final.pdf

¹³ Section 5(7) of the Act

¹⁴ See <https://www.straitstimes.com/politics/shanmugam-addresses-concerns-on-rent-deferment>;
See also 30:20 to 30:25 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

¹⁵ Section 8(1) of the Act

¹⁶ Section 8(2) of the Act

17. The following actions in breach of section 5(2) are also void or invalid:-
 - 17.1. The appointment of a receiver or manager over any property or undertaking of a person;¹⁷
 - 17.2. The repossession of any goods under any chattels leasing agreement, hire-purchase agreement, or retention of title agreement;¹⁸
 - 17.3. The termination of a lease or licence of immovable property due to non-payment of rent or other moneys;¹⁹
 - 17.4. The exercise of a right of re-entry or forfeiture under a lease or licence of immovable property, or the exercise of any other right that has a similar outcome.²⁰

Determination by Assessors

18. Party B (or any party to the contract dissatisfied with Party A's Temporary Relief Notification) can apply for the appointment of an Assessor to determine whether Party A is entitled to the Temporary Reliefs.²¹ The Minister has indicated that there will be about 100 or more Assessors to be appointed by the Ministry of Law, organised into 12 panels, each headed by a State Court judge.²²
19. At the moment, the precise procedure and forms to apply for an Assessor's Determination have **not** been specified by the Minister for Law via regulations under Section 19(1) of the Act. However, we set out below the broad overview on what is provided under the Act.

¹⁷ Section 8(4)(a) of the Act

¹⁸ Section 8(5)(a) of the Act

¹⁹ Section 8(5)(b) of the Act

²⁰ Section 8(5)(c) of the Act

²¹ Section 13 of the Act

²² See 47:42 to 47:52 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

A. Application for an Assessor's Determination

20. An application for an Assessor's determination must²³:-
 - 20.1. Comply with the form and manner specified by regulations;
 - 20.2. Be accompanied by the prescribed fee²⁴; and
 - 20.3. Be served on (a) the other parties to the contract; (b) any guarantor or surety for Party A's obligations in the contract; and (c) other prescribed persons.

21. The Assessor may consider the following factors²⁵:-
 - 21.1. Party A's ability and financial capacity to perform the obligation that is subject of the application;
 - 21.2. Other factors to be prescribed by the Minister; and
 - 21.3. In any event, the Assessor must seek to achieve an outcome that is just and equitable in the circumstances of the case.

22. If the Assessor is satisfied that the Tenant is in fact in a position to pay rent despite the COVID-19 Event, the Assessor may still order that the Tenant pays rent (or part thereof), *if* it is just and equitable. Examples of factors that the Assessor may consider include the tenant's previous years' tax returns and accounts, whether it is truly the case that the landlord may be able to find replacement tenants and whether the current tenant is taking advantage of the situation.²⁶ The Assessor may also decide to suspend payment of rent for 3 months, and if the problems continue, parties may come back to the Assessors to determine whether the suspension should be extended.²⁷

²³ Section 12 of the Act

²⁴ Albeit the Minister has confirmed that there will be no fees to go before the Assessors: see 47:24 to 47:28 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

²⁵ Section 13 of the Act

²⁶ See 34:20 to 34:35 and 35:48 to 34:58 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

²⁷ See 34:47 to 34:53 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

23. No party may be represented by lawyers in the proceedings with the Assessor, and each party must bear its own costs.²⁸ Guidance will be given to the Assessors to hear matters quickly, so as to provide “*quick, inexpensive and effective practical solutions*”.²⁹

B. Effect of an Assessor’s Determination

24. Importantly, the Assessor’s determination is non-appealable and binding on all the parties to the application and all parties claiming under or through them.³⁰

25. If the Assessor finds that Party A’s Temporary Relief Notification is valid, the Assessor may make further determinations in order to achieve a just and equitable outcome, including:-

25.1. Requiring a party to the contract to do anything or pay any sum of money to discharge any contractual obligation;³¹

25.2. In a case where a right of repossession of goods under the contract or of re-entry or forfeiture under a lease or licence of immovable property had been exercised by a party in breach of Section 5(2) – requiring the party to return the goods or give possession of the immovable property to the other party;³² and

25.3. Other determinations not stated in the Act but achieves a just and equitable outcome (“**Further Determination**”).³³

26. The Assessor’s Determination or Further Determination may (with the court’s leave) be enforced in the same manner as a court judgment.³⁴

²⁸ Section 14 & 15 of the Act

²⁹ See 47:24 to 48:10 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

³⁰ Section 13(9) & 13(10) of the Act

³¹ Section 13(3)(a) of the Act

³² Section 13(3)(b) of the Act

³³ Section 13(6) of the Act

³⁴ Section 13(7) of the Act

27. Any party who fails to comply with a Further Determination without reasonable excuse for such non-compliance shall be liable on conviction to a fine not exceeding S\$1,000.³⁵

Passing on Property Tax Remissions

A. Transfer of benefit in relation to property tax remitted

28. Where the property in respect of which property tax has been remitted is leased or licensed by the owner of the property, the owner must pass the benefit of the reduction in property tax to the tenant in the amount or to the extent, in the manner, and in or by the time prescribed.³⁶
29. The properties that qualify for property tax remission include hotels, restaurants and venues used for business meetings, incentive travel, conventions and exhibitions (i.e. MICE premises).³⁷

B. Manner of passing the benefit

30. The manner in which the benefit must be passed may be prescribed as a single method, or a combination of methods, including:-³⁸
- 30.1. a payment of money as a lump sum or by instalments;
 - 30.2. an off-set against a reduction of the whole or any part of any rent or licence fee.

³⁵ Section 13(11) of the Act

³⁶ Section 29(2) of the Act

³⁷ See the Property Tax (Commercial Properties) (Remission) Order 2020 available at <https://sso.agc.gov.sg/SL/PTA1960-S155-2020?DocDate=20200310>

See also the guidelines by the Inland Revenue Authority of Singapore (IRAS) at: https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/News_and_Events/Newsroom/Media_Releases_and_Speeches/Media_Releases/2020/Annex%20A%20-%20Property%20Tax%20Rebate%20for%20Non-Residential%20Properties.pdf

³⁸ Section 29(3) of the Act

31. The owner must also not subject the passing of the benefit to any condition (whether a condition precedent or subsequent, including any change to the terms or conditions of the lease or licence agreement. Any such condition which the owner purports to impose will be void.³⁹

C. Obligation to keep records

32. The owner must retain records evidencing compliance by the owner with Section 29(2) of the Act for a period of 3 years after the end of the period to which the remission relates.⁴⁰

D. Effects of failure to comply

33. If the owner, without reasonable excuse, fails to pass the benefit to the Tenant or fails to retain the records evidencing compliance in accordance with Section 29(5), the owner shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$5,000.⁴¹

E. Disputes in relation to transfer of benefit

34. If there is any dispute in relation to, amongst others, whether the owner is required to pass on any benefit, the amount, extent, manner, or time of passing of such benefit, or any non-compliance by the owner, the owner or tenant may apply for the dispute to be heard and determined by a Valuation Review Panel (“**Panel**”).
35. An application must be made no later than the prescribed period, not being a period less than 12 months after the end of the period to which the remission relates.
36. The Panel must determine any dispute as soon as is reasonably practicable.⁴² In this regard, the Panel may make any further directions that are necessary to give effect to the determination.⁴³

³⁹ Section 29(4) of the Act

⁴⁰ Section 29(5) of the Act

⁴¹ Section 29(6) of the Act

⁴² Section 29(9) of the Act

⁴³ Section 29(10) of the Act

37. If the owner or tenant is dissatisfied with the determination or further direction of the Panel, the owner or tenant may, within 21 days after the date of determination, appeal to the High Court.⁴⁴
38. The High Court, after hearing the appeal, may confirm, vary or reverse the determination of the Panel, and make such directions as the High Court thinks necessary or appropriate.⁴⁵

F. Enforcement of determination of Panel

39. A determination and any further directions of the Panel may be enforced in the same manner as a judgment or order of court, with the leave of Court.⁴⁶ Where leave of Court is granted, judgment may be entered in terms of the determination and further directions.⁴⁷
40. However, where an appeal to the High Court is brought, the determination and further direction of the Panel must not be enforced until the High Court decides the appeal or the appeal is withdrawn.⁴⁸

Conclusion

41. Parliament has moved quickly to address the COVID-19 pandemic that has caused severe cash flow issues to individuals, firms and businesses across various sectors, in particular, commercial tenants, especially after the implementation of the “circuit-breaker” measures for the period of 7 April 2020 to 4 May 2020.
42. The Act reflects the Government’s policy that it is important for various stakeholders not to focus on their own individual needs in these extraordinary times, but to make just and equitable decisions to alleviate the economic impact of COVID-19 on all parties involved.⁴⁹

⁴⁴ Section 29(11) of the Act

⁴⁵ Section 29(12)(c) of the Act

⁴⁶ Section 31(1) of the Act

⁴⁷ Section 31(2) of the Act

⁴⁸ Section 31(3) of the Act

⁴⁹ See 35:08 to 35:32 of <https://www.channelnewsasia.com/news/parliament/videos/april/k-shanmugam-on-covid-19-temporary-measures-bill-12617888>

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