

Summarising The Covid-19 (Temporary Measures) Act 2020 For Banks And Financial Institutions

13 April 2020

Introduction

1. On 7 April 2020, Parliament passed the wide-ranging *COVID-19 (Temporary Measures) Act 2020* (the “**Act**”) to provide temporary, targeted relief to alleviate the immense pressures caused to individuals, firms and businesses as a result of the COVID-19 disease.¹
2. While the reliefs provided are wide ranging and cover both persons and industries, this article focuses on the impact of the Act on banks and financial institutions, and covers the following (*click on any of the sections below to go directly to these sections*) :-
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¹ The Act can be found at <https://sso.agc.gov.sg/Acts-Supp/14-2020/>

Application to Banks and Financial Institutions

3. The temporary relief for inability to perform contracts set out in Part 2 of the Act applies to contracts set out in the Schedule to the Act, but not to contracts entered into or renewed (other than automatically) on or after 25 March 2020.
4. The contracts in the Schedule include the following, which are commonplace in the Banking and Finance industry:-
 - 4.1. A loan or finance contract with qualifying enterprises secured over any commercial or immovable property located in Singapore, or plant, machinery or fixed assets located in Singapore which are used for business purposes;
 - 4.2. A performance bond or equivalent that is granted pursuant to a construction contract or supply contract;
 - 4.3. A hire-purchase agreement or conditional sale agreement, where the good hired or conditionally sold is:-
 - 4.3.1. any plant, machinery or fixed asset which is used for business purposes is located in Singapore; or
 - 4.3.2. a commercial vehicle.
5. The Act also provides temporary relief for financially distressed individuals, firms and businesses by making temporary amendments to bankruptcy and insolvency laws. For example, the Act raises the minimum aggregate debt for making bankruptcy (from S\$15,000 to S\$60,000) and winding up (from S\$10,000 to S\$100,000) applications, and also extends the period to satisfy or set aside a statutory demand from 21 days to 6 months.

Relief for Inability to Perform Contracts

6. The Act introduces temporary relief for inability to perform contracts where such inability is to a material extent caused by COVID-19.

A. *Period of Temporary Relief*

7. Under the Act, such temporary relief lasts for an initial period not exceeding 6 months, which may be subsequently extended or shortened, but shall not extend beyond the period of 1 year.

B. *Pre-requisites to Temporary Relief and Determination by Assessors*

8. A party to a Scheduled contract is entitled to relief in the following circumstances:-
 - 8.1. The party is unable to perform an obligation in the contract which is to be performed **on or after 1 February 2020**;
 - 8.2. The inability is to a **material extent caused by a COVID-19 event; and**
 - 8.3. The party has served a notification under the Act ("**Notification**") on the relevant parties.
9. In the case of a loan or finance contract to an enterprise, the Act has defined an "enterprise" to mean a business that is incorporated, formed or established, and carries on business, in Singapore, where —
 - 9.1. not less than 30% of its shares or other ownership interest is held by Singapore citizens and/or permanent residents; **and**
 - 9.2. the turnover of the enterprise and its group (within the meaning of the Accounting Standards applicable to it) does not exceed S\$100 million in the latest financial year.
10. If there is a dispute as to whether the non-performance as to whether the non-performance was to a material extent caused by a COVID-19 event, it will be referred for determination by an assessor from a pool of Assessors appointed by the Ministry of Law.

11. Parties will not be allowed to be represented by lawyers at proceedings before the Assessor and shall bear their own costs incurred for the proceedings. The Assessor will issue a determination within 5 days which cannot be appealed. Further details on the form and manner for referring disputes for assessment and the procedural rules for the proceedings will be prescribed by regulations to be made by the Minister of Law.

C. Temporary Relief Measures Available

12. The Act prohibits the following legal actions, amongst others, from being taken against a party who qualifies for relief (or the party's guarantor or surety) until (i) the expiry of the prescribed period, (ii) the party withdraws the Notification, or (iii) the assessor determines so:-
 - 12.1. Commencing or continuing any action in court or arbitral proceedings against the party;
 - 12.2. The enforcement of any security over any immovable property, or movable property used for the purpose of a trade, business or profession;
 - 12.3. Making an application under Section 210(1) of the Companies Act (Cap. 50) for a meeting of creditors to be summoned to approve a compromise or an arrangement;
 - 12.4. Making an application for a judicial management order;
 - 12.5. Making a bankruptcy or winding up application;
 - 12.6. The appointment of a receiver or manager over any of the party's property or undertaking;
 - 12.7. The commencement or levying of execution, distress, or other legal process against the party's property, except with leave of the Court; and
 - 12.8. The repossession of any goods used for the purpose of trade, business or profession, under any chattels leasing agreement, hire-purchase agreement or retention of title agreement.

13. Should relief be granted (either upon service of the notifications of relief on the banks or financial institutions or determination by Assessors), it would be an offence for banks or financial institutions to enforce against any of the contracts covered under the Act. Further, any steps taken in breach of the Act will be dismissed, or deemed void or invalid.
14. It should also be noted that on 1 April 2020 (before the Bill was passed into the Act), the Monetary Authority of Singapore ("MAS") commented that the COVID-19 (Temporary Measures) Bill ("Bill") the Bill does not affect the bank's contractual rights, other than to commence legal action for a default on loan which is a Scheduled contract. The banks' contractual right to charge fees and interest for non-payment or late payment of loan obligations due is unaffected.² The Act does not appear to have changed this.

Temporary Relief for Financially Distressed Individuals, Firms, and Businesses

15. Part 3 of the Act modifies other laws to provide temporary relief to financially distressed individuals and businesses during the prescribed period. The modifications include:-
 - 15.1. Increasing the monetary threshold for filing bankruptcy applications from S\$15,000 to S\$60,000;
 - 15.2. Increasing the monetary threshold for insolvency to increase from S\$10,000 to S\$100,000;
 - 15.3. Increasing the time period to satisfy or set-aside a Statutory Demand from 21 days to 6 months; and
 - 15.4. Increasing the monetary threshold for disqualification from debt repayment scheme for individuals from S\$100,000 to S\$250,000.

These modifications do not apply to bankruptcy applications commenced and statutory demands served before the commencement of the Act.

² See comments by MAS on COVID-19 (Temporary Measures) Bill, accessed at <https://www.mas.gov.sg/news/media-releases/2020/comments-by-mas-on-covid-19-temporary-measures-bill> on 9 April 2020.

16. Further, the Act also temporarily relieves directors from their obligations to prevent their companies from trading while insolvent if the debts are incurred in the company's ordinary course of business. However, directors continue to remain criminally liable if the debts are incurred fraudulently.

Conclusion

17. Parliament has moved quickly to react to the COVID-19 pandemic that has severely affected businesses and their cash flow. The Act is a timely intervention to provide affected parties with much needed relief and follows closely with other measures including those taken by MAS and the financial industry to help individuals and SMEs facing temporary cashflow difficulties to meet their loan and insurance commitments.³
18. However, the prohibitions under the Act together with the upward revision of the monetary threshold for bankruptcy and corporate insolvency, as well as the increased time to respond to Statutory Demands, will have an impact on the recovery efforts of banks and financial institutions. This is especially so since the payments will continue to accrue, and the entire accrued sum will be due upon the expiry of the prescribed period. As such, this may result in an increase in default cases and legal proceedings immediately after the expiry of the prescribed period.
19. Moreover, lenders should bear in mind when extending any further loans or credit that the Act allows for businesses to continue trading while being insolvent.

³ See Media Release by MAS on support to individuals and SMEs affected by COVID-19 pandemic by MAS and Financial Industry, accessed at <<https://www.mas.gov.sg/news/media-releases/2020/mas-and-financial-industry-to-support-individuals-and-smes-affected-by-the-covid-19-pandemic>> on 9 April 2020

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