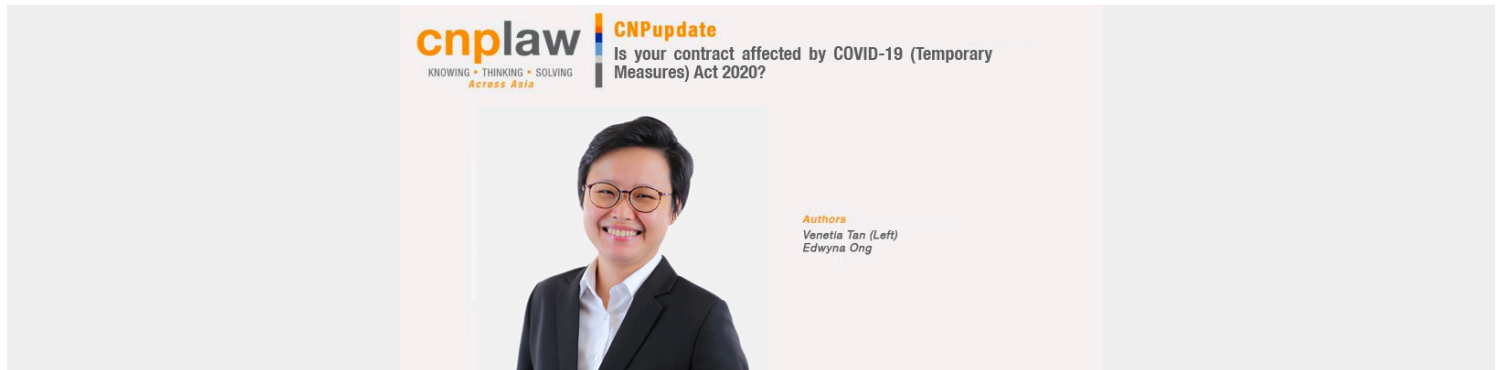


IS YOUR CONTRACT AFFECTED BY COVID-19 (TEMPORARY MEASURES) ACT 2020?

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Categories: [CNPupdates](#), [Covid-19 Resource](#)

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The Singapore [COVID-19 \(Temporary Measures\) Act 2020](#) (the “COVID-19 Act”) provides, amongst other reliefs, temporary relief to businesses unable to perform certain contractual obligations as a result of the COVID-19 pandemic from 20 April 2020 to 19 October 2020 (the “Prescribed Period”). The Prescribed Period may be extended or shortened by the Singapore Minister as ordered in the *Singapore Gazette*.

Are all contracts covered under the COVID-19 Act?

No. The COVID-19 Act only applies where:-

- The contract was entered into or renewed (but not automatically) before **25 March 2020**;
- The contract is one of the following specified types of contracts listed in the Schedule of the COVID-19 Act (a “Scheduled Contract”):
 - Loan facilities by banks and finance companies to Small Medium Enterprises (SMEs)* that are (a) secured against commercial or industrial immovable property in Singapore; or (b) secured against plant machinery or fixed assets used for manufacturing production or other business purpose.

**An eligible SME is a body corporate or unincorporated that is incorporated, formed or established, and carries on business in Singapore with at least 30% of its ownership interest held by Singapore Citizens*

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and/or Singapore Permanent Residents, and having a turnover not exceeding S\$100 million in the latest financial year

- A performance bond or equivalent that is granted pursuant to a construction contract or supply contract.
 - A hire-purchase agreement or conditional sales agreement for any plant, machinery or fixed asset located in Singapore that is used for manufacturing, production or other business purposes, or for a commercial vehicle.
 - An event contract for the provision of a venue, accommodation, amenities, transport, entertainment, catering, etc. for business meetings, concerts, conferences, weddings, etc.
 - A tourism-related contract, such as:
 - a contract for the international carriage of passengers by sea or land;
 - a contract for the provision of transport, short-term accommodation, entertainment, dining, catering, tours or other tourism-related goods or services for visitors to Singapore, domestic tourists or outbound tourists; or
 - a contract for the promotion of tourism in Singapore or the distribution for the purposes of trade or retail of products related to such tourism.
 - A construction contract or supply contract falling within the definition of Section 2 of the Building and Construction Industry Security of Payment Act (Cap. 30B), except a construction contract or supply contract under which a party has undertaken to provide construction work or supply goods and services as an employee of the counterparty; or
 - A lease or licence of non-residential immovable property i.e. lease of office premises.
- The contractual obligation is to be performed **on or after 1 February 2020**;
 - The inability to perform the contractual obligation in question is to **a material extent** caused by a COVID-19 event.

Does the temporary relief apply automatically?

No. A [Notification for relief](#) will have to be served first on the following relevant parties before such relief may come into effect:

- The other party or parties to the Scheduled Contract;
- Any guarantor or surety for the affected party's obligation in the Scheduled Contract; and
- The issuer of a performance bond or equivalent for the performance of the obligation, where the contract is a construction contract or supply contract

The [Notification for relief](#) may be served electronically with a [SingPass](#) or [CorpPass](#), with the email addresses of the relevant parties. Otherwise, the Notification for relief can be served on the relevant

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parties' last known email address, using an internet-based messaging service, their website, social media page, or by registered post to their last postal address.

What relief is offered under the COVID-19 Act?

The COVID-19 Act prohibits or stops a party to a Scheduled Contract from taking certain actions against a non-performing party who has served a Notification for relief or their guarantor or surety, including but not limited to:

- Commencing legal proceedings in court or arbitral proceedings under the Arbitration Act (Cap. 10);
- Enforcing any security over any immovable property or movable property used for the purpose of a trade, business, or profession i.e. plant and machinery;
- Commencing bankruptcy or winding-up proceedings;
- Terminating a lease or licence of immovable property where the inability to perform is the non-payment of rent or other moneys;
- Exercising a right of re-entry or forfeiture under a lease or licence of immovable property, or such other right with a similar outcome; and
- Enforcing a court judgment or arbitral award obtained against the non-performing party.

The complete list of prohibited actions is set out under section 5(3) of the COVID-19 Act.

Parties to a construction contract or supply contract, as well as an event contract or tourism-related contract are entitled to additional relief under sections 6 and 7 of the COVID-19 Act:-

- Prohibiting the counterparty from calling on a performance bond given pursuant to the affected construction contract or supply contract at any time earlier than seven (7) days before the expiry of the performance bond; and
- Prohibiting the forfeiture of any deposit taken under the affected event or tourism-related contract arising from the inability to perform the contract. Where, during the period between 1 February 2020 and the date of commencement of section 7 of the COVID-19 Act, such deposit has been forfeited, the contracting party receiving such Notification for relief must restore the deposit to the affected party.

How long will the temporary relief last?

The Temporary Relief under the COVID-19 Act will only last for and until the following events occur, whichever is earlier (the "Temporary Relief Period"):

- The expiry of the Prescribed Period ;
- The withdrawal of the Notification for relief; or

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- When the counterparty disputes the Notification for relief and the assessor determines that the non-performing party does not qualify for the relief under the COVID-19 Act.

Further, the relief under the COVID-19 Act **only suspends the parties' obligations** under the Scheduled Contracts. Once the Temporary Relief Period ends, parties' rights and obligations against each other will resume. This will include the obligation to pay all monies due and payable **during** the Temporary Relief Period.

What if I disagree with the notification for relief?

If you do not agree with the Notification for relief, you may make an application with a [SingPass](#) or [CorpPass](#) to the Registrar of assessors for an assessor to be appointed to determine whether the temporary relief ought to apply to your contract, or whether it is just and equitable for a deposit taken under an event or tourism-related contract to be forfeited.

The time period to make such an application is:

- Within **two (2) months** from 20 April 2020 for an event contract, tourism-related contract, construction contract, or supply contract; and
- Within the Prescribed Period for all other Scheduled Contracts

You will need to submit the following supporting documents with your application:-

- A copy of the Notification for relief;
- A copy of contract, or if there is no written contract, a description of how the contract was made and the relevant terms of the contract; and
- Any other relevant supporting documents i.e. correspondence, meeting notes, etc.

A summary of the process can be found [here](#).

In making such a determination, the assessor may take into account the ability and financial capacity of the party concerned to perform the contractual obligation in question, among other factors, in achieving a just and equitable outcome in the circumstances of each case.

As the process is intended to be expedient and simple given the time-sensitive nature of the relief, parties are not allowed to be represented by lawyers during the assessment. In the same vein, there will not be any cost orders made against parties.

It is important to note that, the assessor's decision will be final and binding. You cannot appeal against the decision, even if the result is not in your favour.

Additionally, the assessor's determination is capable of being enforced against a non-complying party in the same manner as a court judgment or order with the court's permission.

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Other options under the law

The COVID-19 Act does not preclude actions taken pursuant to the Frustrated Contracts Act (Cap. 115) or a force majeure clause found in the contract in question. In the event that these options are available to you, you will need to make a commercial assessment in order to decide your best option to limit your losses during this uncertain period.

If you are relying on a force majeure clause to terminate your contract without further liability, you will need to read it carefully and ensure that the present circumstances fall within the scope of or events specified in the force majeure clause. You may also need to comply with the necessary notice requirement and/or further conditions precedent before you can invoke the force majeure clause. It is therefore important to examine the specific terms in your contract before taking any action.

While the COVID-19 Act expressly prohibits the commencement or continuation of arbitration proceedings under the Arbitration Act (Cap. 10), it does not extend to arbitration proceedings commenced under the International Arbitration Act (Cap. 143A).

Further, parties may wish to consider mediation under the Mediation Act 2017 (No. 1 of 2017), in a bid to resolve their contractual disputes in a more amicable fashion and to preserve their commercial relationship with their business partners and contracting parties. The process is a voluntary one, and all parties involved must be agreeable to mediate their dispute.

Extension of contractual limitation period

Under Singapore law, an action founded on a contract has a limitation period of six (6) years. If you are served with a Notification for relief, the limitation period for any action to be brought on the Scheduled Contract in question will be extended by a period starting on the date of the service of the Notification and ending on the occurrence of the following events, whichever is earlier:

- The expiry of the Prescribed Period ;
- The withdrawal of the Notification for relief; or
- When the counterparty disputes the Notification for relief and the assessor determines that the non-performing party does not qualify for the relief under the COVID-19 Act.

Potential solvency risks

The COVID-19 Act further provides for an increase in the bankruptcy and insolvency thresholds. As such, parties ought to be aware that their contracting parties and business partners may potentially be facing insolvency under the usual provisions at law but are still allowed to carry on business given the increased thresholds. It therefore remains crucial for parties to be alert to potential risks of bankruptcy and insolvency among their contracting parties and business partners when encountering issues of credit

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during this period.

Our thoughts

Businesses and stakeholders should not view the COVID-19 Act and/or the temporary measures as their get-out-of-jail-free card or a blanket justification to stop or avoid performing all their contractual obligations. The temporary relief should be taken as a last resort, when they are unable to perform their contractual obligations to a material extent caused by a COVID-19 event.

Whilst the COVID-19 Act does not allow you to be represented by lawyers in the assessment proceedings, you may still engage lawyers to discuss your legal position and your next steps as they have consequences which are permanent and irreversible.

Should you require further clarification on the COVID-19 Act or specific advice on the above points, please do not hesitate to contact us and look at our COVID-19 Resource page.

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