

Updated FAQ:

Processes for notification for relief and disputes pursuant to the COVID-19 (Temporary Measures) Act 2020

1. Introduction

The COVID-19 (Temporary Measures) Act 2020¹ (the 'Act') which was introduced, read and passed in Parliament on 7 April 2020 seeks, inter alia, to:

- a) provide temporary relief to individuals and businesses which are unable to perform their contractual obligations due to the unprecedented COVID-19 outbreak through a statutory moratorium on the enforcement of rights and obligations relating to certain contracts to be performed on or after 1 February 2020 and for contracts that were entered into before 25 March 2020; and
- b) provide temporary relief for financially distressed individuals and businesses through increased monetary thresholds for bankruptcy and corporate insolvency as well as a lengthened time period to satisfy a statutory demand from creditors.

2. New Subsidiary Legislation passed to commence operation of the Act

Following the introduction of the Act, the following subsidiary legislations were introduced on 20 April 2020 in order to give effect to and to implement the various provisions in the Act:

Regulation	Purpose
COVID-19 (Temporary Measures) Act 2020	Causes the following provisions of the Act to come into operation on 20 April 2020:

The COVID-19 (Temporary Measures) Act 2020

(Commencement) (No 2) Notification 2020	<ul style="list-style-type: none"> • temporary relief for inability to perform contracts; • temporary relief for financially distressed individuals, firms and businesses; • the Schedule (which lists the contracts covered by the Act).
COVID-19 (Temporary Measures) Act 2020 (Amendment of Schedule) Order 2020	Excludes a contract in relation to which section 4 of the International Interests in Aircraft Equipment Act (Cap 144B) applies from the Schedule.
COVID-19 (Temporary Measures) (Prescribed Period) Order 2020	Provides that the 'prescribed period' in the Act for the purposes of the temporary relief measures means 6 months commencing on 20 April 2020.
COVID-19 (Temporary Measures) (Temporary Relief)	Sets out the applicable procedures for serving a Notification for Relief and

¹ For more on the Act, see our earlier [FAQ: COVID-19 \(Temporary Measures\) Act 2020](#) which addresses how subsidiary legislation in the form of regulations were to be passed to set

out various timelines and processes for parties to obtain temporary relief under the Act.

for Inability to Perform Contracts Regulations 2020 (the 'Relief Regulations')	Assessor's Determination where there is a dispute as to the applicability of the Act.
COVID-19 (Temporary Measures) Act 2020 (Commencement) (No 3) Notification 2020	Provides that Part 6 (temporary measures concerning remission of property tax) of the Act comes into operation on 22 April 2020.

3. What is the effect of the subsidiary legislations above?

The COVID-19 (Temporary Measures) Act 2020 (Commencement) (No 2) Notification 2020 puts section 3 and Parts 2 and 3 of the Act into operation as of 20 April 2020. Moreover, the COVID-19 (Temporary Measures) (Prescribed Period) Order 2020 (the 'Order') provides that the references in Parts 1, 2,³ and 3⁴ of the Act to the 'prescribed period' is for 6 months commencing on 20 April 2020.

The main effect of the Order is that from 20 April 2020 to 19 October 2020 (the 'Prescribed Period'), there is a statutory moratorium on Singapore domestic legal proceedings sought to be brought against a party who is unable to perform a Schedule Contract covered by the Act.

Subject to the formalities and processes set out in the following sections, a party to a Scheduled Contract cannot be sued in the Singapore courts or have domestic arbitration proceedings brought against it for not performing its obligations under the contract in question. Likewise, the innocent party will not be able to commence court or arbitration proceedings during the Prescribed Period to enforce its rights under the contract. Any ongoing Singapore court or domestic arbitration proceedings in relation to a Schedule Contract may also be stayed or dismissed.

Moreover, during the Prescribed Period, the applicable bankruptcy and corporate insolvency thresholds are S\$60,000 and S\$100,000 respectively, and debtors have 6 months (instead of the usual 21 days) to satisfy a statutory demand (the 'Temporary Financial Distress Relief').

² Part 2 of the Act sets out how parties to Scheduled Contracts are granted temporary relief from their inability to perform the contracts in question.

³ Part 3 concerns temporary relief for individuals, firms and businesses which are in financial distress.

4. How does the non-performing party know if it qualifies for relief under the Act?

- 1) Is the contract a Scheduled Contract? These are:
 - a) secured⁵ loan facilities granted by a licensed bank or licensed finance company to Small & Medium Enterprises (ie businesses with turnover of not more than S\$100 million in the latest financial year);
 - b) performance bond or equivalent granted under a construction contract or supply contract; or
 - c) hire-purchase agreement or conditional sales agreement, ie for commercial vehicles, or plant, machinery or fixed asset located in Singapore and which is used for manufacturing, production or other business purposes;
 - d) event contract, eg venue or catering for weddings, business meetings; or
 - e) tourism-related contract, eg cruises, hotel accommodation bookings; or
 - f) construction contract or supply contract, eg contract for supply of materials for construction works; or
 - g) lease or licence of non-residential immovable property, eg lease for factory premises.
- 2) If the answer to Q1 is yes, was the contract formed or renewed before 25 March 2020 **AND** were the obligations to be performed on or after 1 February 2020?
- 3) If the answer to Q2 is yes, was the inability to perform materially caused by the COVID-19 outbreak, ie would the party have been able to perform the contract if COVID-19 did not happen; or was COVID-19 the main reason why the party could not perform the contract?
- 4) If the answer to Q3 is yes, the party qualifies for temporary contractual relief under the Act.
- 5) If the answer to any of the preceding questions is no, then a party does **not** qualify for

⁵ The security may be in the form of (a) commercial or industrial immovable property in Singapore or (b) plant, machinery or fixed asset located in Singapore and which is used for manufacturing, production or other business purposes.

temporary contractual relief. However, one would still qualify for the Temporary Financial Distress Relief.

5. How can a non-performing party invoke the temporary contractual relief protection of the Act?

It is important to note that relief under the Act is not automatic. To take advantage of the statutory moratorium, the non-performing party ('A') must serve a Notification for Relief (a '**Notification**') in accordance with the requirements under the Act and the Relief Regulations.

However, before resorting to the provisions in the Act, the Ministry of Law has advised parties to '*first discuss, understand each other's positions, and try to reach a compromise*'.⁶

5.1 Who must a Notification be served on?

A Notification must be served on:

- a) the other party(ies) to the contract;
- b) any guarantor or surety for the contractual obligation; and
- c) the issuer of a performance bond or equivalent for the performance of the obligation, where the contract is a construction contract or supply contract ('**Issuer of Related Performance Bond**') (collectively the '**Relevant Parties**').

5.2 What form must the Notification be in?

The Notification is to be in Form 1, which can be obtained from the [Ministry of Law's website](#). Alternatively, parties may access and serve an electronic version of Form 1 through [SingPass](#)⁷ or [CorpPass](#)⁸ on the relevant counterparties.

5.3 How can the Notification be served?

There are two modes by which a Notification may be served: (a) electronic or (b) postal (collectively the '**Prescribed Modes of Service**').

⁶ The relevant forms mentioned below can be found on the Ministry of Law's website [here](#).

⁷ SingPass stands for Singapore Personal Access and is an authentication system which allows its user to access government digital services easily and securely. It is available to Singapore Citizens, Permanent Residents, Employment Pass ('EP') and Personalised Employment Pass ('PEP') holders, EntrePass holders, S-Pass holders Dependant Pass holders (of EP, PEP, EntrePass and S-Pass holders),

Electronic service	<ol style="list-style-type: none">1. As long as the email addresses of the Relevant Parties are known, A may serve a Notification electronically through SingPass or CorpPass (the 'Electronic System').2. If A is unable to send the Notification via the Electronic System, A may send a Notification to the Relevant Parties' last email address using any other means.3. If neither of the methods above are available and the Relevant Parties:<ol style="list-style-type: none">a) Either:<ol style="list-style-type: none">i. have an account for the use of an internet-based messaging service and that service provides a mechanism for the receipt of electronic communications in that account; orii. own or operate an Internet website, blog, or page on any social media or social networking Internet website which provides a mechanism for the receipt of electronic communications on that Internet website, blog or page on that social media or social networking Internet website; andb) the mechanism mentioned is the means or one of the means by which A corresponds with the Relevant Parties on matters concerning the scheduled contract,
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Long Term Visit Pass-Plus (LTVP+) holders, Long Term Visit Pass holders as well as selected Work Permit.

⁸ CorpPass is the corporate equivalent of SingPass. It is a corporate digital identity for businesses and is the only login method for online corporate transactions with the Government. It is available to Singapore registered entities and foreign registered entities (including branches and representative offices).

	A may send a Notification to the Relevant Parties using that mechanism.
Postal service	If A is unable to send a Notification by any of the electronic service methods, A may send the Notification to the Relevant Parties' last postal address by prepaid registered post.

5.4 When must the Notification be served by?

The Relief Regulations prescribe that a Notification must be served on the other contracting party(ies) before the end of the Prescribed Period (ie 19 October 2020).

As for the surety/guarantor or Issuer of a Related Performance Bond, a Notification must be served no later than one working day after the date of service of the Notification on the other contracting party(ies).

5.5 Can a Notification be withdrawn?

Yes. As with service of Notification, a [Notice of Withdrawal \(Form 3\)](#) may be served through [SingPass](#) or [CorpPass](#) on the other contracting party(ies). However, A is not prevented by the withdrawal of its notification for relief from serving another notification for relief.

If an Application for an Assessor's Determination (an 'Application') has already been submitted to the Registrar (see Question 6.1 below), A must also file or submit a copy of the Notice of Withdrawal to the Registrar together with a [Declaration of Service \(Form 4\)](#) of service of the Notice of Withdrawal on the other contracting party(ies). The Declaration of Service is to be submitted within 2 working days after the date of service of the Notice of Withdrawal on the other contracting party(ies).

Finally, if A has submitted a [Memorandum of Notification for Relief \(Form 2\)](#) in order to obtain a stay or dismissal of ongoing court or domestic arbitration proceedings (see Question 7 below), A must within 2 working days after the date of service of the Notice of Withdrawal on the other contracting party(ies), file or submit to the relevant court or tribunal, a [Memorandum of Service of Withdrawal \(Form 5\)](#).

6. What happens if there is a dispute as to entitlement for relief under the Act?

Since the inability to perform must be '*materially caused by a COVID-19 event*', disputes will inevitably arise as to whether the non-performing party qualifies for relief under the Act. In such an instance, the party which disagrees with the Notification may refer the matter for a final and binding determination by an Assessor. The Ministry of Law has, however, stressed that: '*parties should first discuss, understand each other's positions, and try to reach a mutual agreement before turning to an Assessor*'.

6.1 Step 1: Apply for Assessor's Determination

Any party(ies) to the contract may after service of, or being served, a Notification, apply for an Assessor's Determination by submitting an Application for an Assessor's Determination (an 'Application') to the Registrar via [SingPass](#) or [CorpPass](#).

It is crucial to bear in mind that the Application must be made within the following time limits:

- a) if the contract is an event contract, tourism-related contract, construction contract or supply contract, the Application must be made between 20 April 2020 and 19 December 2020 (being the end of 2 months after the end of the prescribed period);
- b) for all other Scheduled Contracts, the Application must be made between 20 April 2020 and 19 October 2020.

The Application is in [Form 6](#) and must be accompanied by (a) a copy of Notification and (b) a copy of the contract or, in the case of an oral contract, a description of how the contract was made and its terms. Parties will be heartened to note that as of now, the Application can be submitted at no cost.

6.2 Step 2: Registrar's review of the Application

The Registrar reviews the Application and if satisfied that the Application is in order, the Registrar will send the applicant (i) an acknowledgment of receipt of the Application; and (ii) a Response in [Form 8](#) or link to the Response form that the Respondent must submit to the Registrar.

6.3 Step 3: Service of Documents on the Relevant Parties

The Applicant must, within 2 working days after receiving the documents from the Registrar, serve a copy of the Application and

documents received from the Registrar (collectively the 'Documents') on the Respondent and the Relevant Parties.

Service of the Documents may be effected by electronic service or postal service.

6.4 Step 4: Submission of Declaration of Service

Within 1 working day of Service of Documents on Respondent and Relevant Parties, the Applicant must submit to the Registrar a [Declaration of Service \(Form 4\)](#) by [SingPass](#) or [CorpPass](#).

6.5 Step 5: Respondent's Submission of Response

Within 5 working days of being served the Documents, the Respondent must submit a [Response \(Form 8\)](#) to the Registrar and serve the Response on (a) the Applicant; (b) the guarantor/surety; and (c) the Issuer of a Related Performance Bond via [SingPass](#) or [CorpPass](#) or any of the other Prescribed Modes of Service.

If the Respondent fails to submit a Response, the Registrar may proceed to appoint an Assessor who may make its determination on the Application, and which determination will be binding on all parties to the Application.

6.6 Step 6: Appointment for Hearing

If the Registrar is satisfied that Steps 3–5 above have been duly completed, it will send to the Applicant and Respondent by way of email (a) a notice of the appointment of an Assessor; and (b) if applicable, a notice of the date and place for the hearing.

6.7 Step 7: Hearing and Determination by Assessor

a) Conduct of Hearing

A Hearing will generally be conducted by exchange of email.

However, the Assessor may, if he/she is of the opinion that the interest of justice would be better served, direct that (a) the hearing be conducted online via Webex; or (b) parties to attend before the Assessor at the State Courts Towers or other venue as advised by the Registrar. For online or physical hearings, the Assessor may permit a party to be accompanied by an interpreter at the party's own costs.

Parties should note that they cannot be represented by a lawyer at proceedings before an Assessor.

Further, the Assessor may dispense with a Hearing and make a Determination on a *documents-only basis* ie relying solely by reference to the forms and documents submitted by the parties if he/she is of the opinion that those are sufficient for him/her to make a Determination.

b) Assessor's Determination

Where a party to the Determination is absent, the Assessor may (a) decline to make a Determination and dismiss the Application (a 'Dismissal'); or (b) hear and make a Determination on the Application.

A Dismissal or Determination which is made in the absence of a party may on the absentee party's application be set aside by the Assessor or another Assessor if he/she is satisfied that that party had a good reason for being absent from the Hearing and that it is just in the circumstances to set aside the Dismissal or Determination.

Where more than one Assessor has been appointed, the Determination will be made unanimously.

Finally, the Relief Regulations also provides that an assessor may make further determinations in respect of every category of Scheduled Contract, in order to achieve an outcome that is just and equitable in the circumstances of a case, except the following:

- a) a performance bond or equivalent that is granted pursuant to a construction contract or supply contract;
- b) a construction contract or supply contract.

6.8 Step 8: Applicant and Respondent informed of Assessor's Determination

After the Assessor has made a Determination, the Registrar will inform the Applicant, Respondent and all other Relevant Parties who were served the Application.

The Assessor's Determination is final and binding and there is no right of appeal against it.

6.9 Step 9: Correction of Error in Assessor's Determination

Where there is a clerical mistake or error arising from an accidental slip or omission in the Determination, it may be corrected on the Assessor's own motion or on the application of a party to the Determination using [Form 11](#). This process is **not** to be used as a method to

appeal or otherwise challenge the Determination on its merits.

An application by a party to the Determination may be made via [SingPass](#) or [CorpPass](#).

6.10 Step 10: Application to Set Aside a Dismissal or Determination

Where a party is *absent* from the Hearing and a Dismissal or Determination has been made, the absentee party may apply via [SingPass](#) or [CorpPass](#) to set aside either the Dismissal or Determination using [Form 9](#).

If the other party wishes to oppose the setting aside application, he must within the a period directed by the Registrar, submit to the Registrar and serve on the other party a Reply in [Form 10](#) via [SingPass](#) or [CorpPass](#) or any of the other Prescribed Modes of Service.

The Assessor may set aside the Dismissal or Determination on such terms as they consider just and may proceed to hear the case and make a fresh determination thereon.

7. What is the process to stay or dismiss ongoing Singapore court or domestic arbitration proceedings?

The Act prohibits the commencement of, *inter alia*, court or *domestic* arbitration proceedings against a non-performing party under a Scheduled Contract until the earliest of (a) expiry of the Prescribed Period; (b) withdrawal of Notification or (c) Assessor's Determination that the case is not one which qualifies for relief under the Act.

Where there are existing court or domestic arbitration proceedings against the non-performing party or its guarantor/surety at the time the Notification is served; or where such proceedings are commenced after service of the Notification, the Applicant may file with the court or submit to the tribunal before which proceedings are pending, a [Memorandum of Notification for Relief \(Form 2\)](#) in order to obtain a stay or dismissal of these ongoing proceedings.

Moreover, where a Memorandum of Notification for Relief has been lodged with the court or an arbitral tribunal, the Applicant has a duty to update the court or tribunal of the Application and any Determination in a timely manner. In this regard, a [Notification of Status of Application for Determination \(Form 7\)](#) must be

submitted to the court or tribunal within 2 working days of any of the two events below:

- a) service of the Application has been completed;
- b) proceedings before the Assessor have concluded, ie Assessor gave a Determination; Assessor dismissed the Application; or Application was withdrawn.

In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.

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Outside of practice, she enjoys writing on the latest legal developments and has contributed to various articles published by LexisNexis, Global Arbitration Review and of course, the Bird & Bird legal updates.