

The COVID-19 Act: A Primer for Businesses on Seeking Relief

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Introduction

The COVID-19 (Temporary Measures) Act 2020 (the Act) affects certain business contracts impacted by the pandemic. Business owners should familiarize themselves with the Act and consider if they can take the opportunity to avail themselves of statutory relief.

We provide a primer on whether and how your business can seek relief under the Act.

Whether the Act applies to you

The Act imposes a moratorium on certain legal actions. The underlying intention is for parties to try to negotiate without the threat of legal proceedings.

Not all contracts are covered by the Act. Presently, only the following categories of contracts stipulated within the Schedule to the Act are covered:

- a. a contract for the grant of a loan facility by a bank licensed under the Banking Act (Cap. 19) or a finance company licensed under the Finance Companies Act (Cap. 108) to an enterprise, where such facility is secured, wholly or partially, against any commercial or industrial immovable property located in Singapore;
- b. a contract for the grant of a loan facility by a bank licensed under the Banking Act or a finance company licensed under the Finance Companies Act to an enterprise —
 - where such facility is secured, wholly or partially, against any plant, machinery or fixed asset located in Singapore; and
 - where such plant, machinery or fixed asset (as the case may be) is used for manufacturing, production or other business purposes;
- c. a performance bond or equivalent that is granted pursuant to a construction contract or supply contract;
- d. a hire-purchase agreement or conditional sales agreement as defined under the Hire-Purchase Act (Cap. 125), where the good hired or conditionally sold under the agreement is —
 - any plant, machinery or fixed asset located in Singapore, where such plant, machinery or fixed asset is used for manufacturing, production or other business purposes; or
 - a commercial vehicle;
- e. an event contract;
- f. a tourism-related contract;

- g. a construction contract or supply contract; and
- h. a lease or licence of non-residential immovable property.

Further, the Act only applies to contracts entered into **before 25 March 2020**, and only where the obligations are to be performed **on or after 1 February 2020**.

How you can seek relief

A. Notification for Relief

The process begins with the applicant serving a Notification for Relief on the following recipients (where applicable) (Relevant Parties):

- a. The other party or parties to the contract;
- b. Any guarantor or surety for the obligation in the contract; 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.

A Notification for Relief should set out the obligation that was to be performed and explain how COVID-19 has affected the applicant's ability to perform.

The Notification for Relief should be served through the Ministry of Law's Electronic Filing System, via CorpPass (for companies) or SingPass (for individuals).

If you are unable to use the Electronic Filing System, you can use the following alternative methods of service (Alternative Service Modes):

(a) By email

if this method is unavailable, then:

(b) By an internet-based messaging system (e.g. WhatsApp) or the messaging system on the website, blog, or social media or networking website owned or operated by the Recipient(s), provided you have corresponded with the Recipient via that messaging system regarding the contract;

if this method is unavailable, then:

(c) By prepaid registered post. If parties disagree on whether the COVID-19 situation has caused the non-performance, they should first engage in discussions and try to reach a compromise.

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B. Applying for Assessor's Determination

If parties cannot reach a compromise after the Notification for Relief has been served, the party seeking relief (Applicant) can apply for an Assessor's determination (Determination).

The Applicant must make an application (Application) via the Ministry of Law's Electronic Filing System. It must be accompanied by:

- a. A copy of the Notification for Relief;
- b. A copy of the contract (or if there is no contract, a description of the terms of the contract); and
- c. Any other relevant supporting documents.

If the Application is in order, the Applicant will receive:

- a. An acknowledgement of receipt of the Application; and
- b. A Response form or link to a Response form that the other parties to the contract (Respondent) must submit to the Registrar.

C. Serving Documents on Respondent

Within 2 working days after receiving the documents from the Registrar, the Applicant must serve a copy of the Application for a Determination, together with the documents received from the Registrar, on the Respondent and other Relevant Parties.

These may be served by the Alternative Service Modes discussed above.

Once the documents have been served, the Applicant must submit to the Registrar (via electronic system) a Declaration of Service demonstrating that the documents have been served on the Recipient(s) within 1 working day of completion of service.

D. Respondent's Response

Upon receipt of the documents, the Respondent must submit a Response to the Registrar and serve the Response on the Relevant Parties.

This should be done via the Electronic Service System. If the Respondent is unable to do so, it should:

- a. Send the Response to the Registrar by email, citing the Application Number in the email; and
- b. Serve the Response on the other Relevant Parties using the Alternative Service Modes discussed above.

It should be noted that even if the Respondent does not submit a Response, the Registrar may proceed to appoint an Assessor.

E. Hearing

If the Registrar is satisfied that the above steps have been completed, the Registrar will send to the Applicant and Respondent by email:

- a. A notice of the appointment of an Assessor; and
- b. If applicable, a notice of the date and place for the hearing.

The hearing will generally be conducted by **exchange of emails**.

The Assessor may request for clarifications or documents by email.

If the Assessor is of the view that the interests of justice would be better served by an **online or physical hearing**:

- a. Online hearings will be conducted via Webex.
- b. Physical hearings will be held at the State Courts Towers (1 Havelock Square, Singapore 059724) or other venue as advised by the Registrar.

For both online and physical hearings:

- a. An Assessor may permit a party to be accompanied by an interpreter at the hearing. The party will be responsible for their own interpreter.

b. No party may be represented by an advocate and solicitor at proceedings before an Assessor.

If a party is absent from the hearing, the Assessor may dismiss the application or make a Determination.

If a party had a good reason for being absent, it may make an application to set aside the dismissal or Determination made in their absence.

F. Assessor's Determination

In making his/her Determination, an Assessor will take into account the parties' financial situations, and strive to achieve a Determination that is just and equitable in the circumstances of the case.

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

As part of the Determination, an Assessor may require a party to a contract to do anything, or pay any sum of money to discharge any contractual obligation. The overarching aim of a Determination is to achieve a just and equitable outcome for the parties.

An Assessor could, for instance, decide that a deposit should be returned, subject to a reasonable deduction for expenses incurred by a vendor.

There is no appeal against a Determination and it is binding on all parties to the Application. Non-compliance with a Determination is an offence and a fine of up to \$1,000 may be imposed.

The records of the Determination will be kept by the Registrar until 20 October 2022.

The Registrar may publish the facts of the case, the arguments and the Determination without disclosing the names of the parties concerned or any information that may disclose their identities.

Other considerations

A. Setting Aside a Determination

If a party is absent during the hearing, the Assessor can still make a Determination. If the absent party has a good reason for its absence, it can apply to set aside the Determination (Setting Aside Application).

The Setting Aside Application must be submitted to the Registrar and other Relevant Parties by the Electronic Filing System.

If the other party wishes to oppose the Setting Aside Application, it must, within the time period directed by the Registrar, submit a Reply to the Registrar and serve the Reply on the party who made the application. This must be done via the Electronic Filing System.

If the Assessor decides to set aside the dismissal or Determination, the Assessor may do so on such terms as he/she considers just and may proceed to hear the case and make a fresh Determination.

B. Court / arbitration proceedings

Once an affected party has served the Notification for Relief, it can submit a **Memorandum of Notification for Relief** to a Court or arbitral tribunal for the purposes of obtaining a stay / dismissal of proceedings revolving around its failure to perform its contractual obligations.

The relevant forms and procedures can be found at [here](#).

Conclusion

During this trying time, business owners should consider if they are eligible to obtain statutory relief under the Act. In line with the rationale of the Act, a deferral of contractual obligations could provide a critical respite, giving businesses an opportunity to enter into a state of suspended animation and prime themselves for the eventual resumption of activities.

Please feel free to reach out to us if you have any queries on the Act and its implications.

Further insights by Dentons Rodyk on the Act and the implications of COVID-19 can be found [here](#).

Dentons Rodyk thanks and acknowledges Practice Trainee Joshua Ng for his contributions to this article.

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