

Legal Options in this Pandemic: Restructuring and Relief

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Legal Options in this Pandemic: Restructuring and Relief



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Introduction



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A global pandemic

COVID-19 has caused unprecedented damage worldwide.

- Health crisis causing widespread loss of life
- Psychological strain
- Severe economic impact



Significant Impact on Singapore Businesses

Multiple sectors hard hit

- Supply chains
- Travel
- Transport
- Entertainment and F&B
- Retail

Outline

- Debt Restructuring
- Government Support
- Managing Manpower
- Restructuring options
- COVID-19 (Temporary Measures) Act 2020

Debt Restructuring

- Managing contractual obligations:
 - (a) Renegotiating terms/variation
 - (b) Frustration/Force Majeure
- Statutory debt restructuring



Debt Restructuring

- Schemes of Arrangement
 - (a) A compromise arrangement reached with creditors or others.
 - (b) The arrangement will be binding on creditors if approved by the Court.
 - (c) Court support.
- Judicial Management
- Liquidation

Government Support and Corporate Restructuring



Sunil Rai
Partner

Government Support

Three Budget Announcements amount to S\$53 billion (for businesses) within 2 months – Unity, Resilience and Solidarity

Aim:

- Saving jobs
- Helping businesses with cashflow, cost, and credit
- Helping businesses preserve their capacity and capabilities, to resume activities when the circuit breaker is lifted

Helping Businesses

SAVING JOBS, SUPPORTING WAGES

Enhanced Jobs Support Scheme (JSS)

- **Government** will help employers by **paying 25% on the first \$4,600 of gross monthly salaries per employee**, up from 8% on the first \$3,600 previously
- Government will **raise the wage subsidy for all firms to 75% of gross monthly wages**, for the first S\$4,600 of wages paid in April and May 2020, for each local employee
- Wage support after May 2020 will be back to those under the Resilience budget package (75% for aviation, accommodation, tourism sectors; 50% for F&B; 25% for others)
- JSS will be for **9 months** till end-2020, up from 3 months previously
- JSS extended to business owners (who are both shareholder-directors of the Company)

Aim of this strong support

- Directly reduce firms' wage costs
- Help them retain their workers

STABILISING BUSINESSES

HELPING WITH CREDIT

Enterprise Financing Scheme (EFS)

- Maximum loan quantum of **EFS-Trade Loan** increased from \$5m to \$10m Maximum loan quantum of **EFS-SME Working Capital Loan** increased from \$0.6m to **\$1m**

Temporary Bridging Loan Programme

- Expanded to **cover all sectors** and maximum supported loan raised from \$1m to **\$5m**

Loan Insurance Scheme

- Subsidy for Loan Insurance premium raised to **80%**
- ➔ Increase **Government's risk share** of loans made under the **Temporary Bridging Loan Programme** and **Enterprise Financing Scheme – Trade Loan** from 80% to 90% for loans initiated from 8 April 2020 until 31 March 2021

STABILISING BUSINESSES

HELPING WITH CREDIT

Temporary Bridging Loan Programme (TBLP) - provides access to working capital for business needs

- Financing support to alleviate cashflow needs of enterprises affected by the COVID-19 outbreak.
- Eligible enterprises may borrow up to \$5 million under the TBLP, with the interest rate capped at 5% p.a., from Participating Financial Institutions (PFIs).
- The Government will provide 90% risk-share on these loans for new applications initiated from 8 April until 31 March 2021.
- Eligible enterprises under the TBLP may also apply for up to 1 year deferral of principal repayment to help manage their debt, subject to assessment by the PFIs.

Eligibility criteria

- Be a business entity that is registered and physically present in Singapore
- At least 30% local equity held directly or indirectly by Singaporean(s) and/or Singapore PR(s), determined by the ultimate individual ownership

STABILISING BUSINESSES

HELPING WITH CREDIT

EFS-Trade Loan - Maximum loan quantum of **EFS-Trade Loan** increased from \$5m to \$10m

- Finance trade needs, including:
 - Inventory / stock financing
 - Structured pre-delivery working capital (revolving working capital)
 - Factoring (with recourse) / bill of invoice / AR discounting
 - Overseas working capital loan

EFS Trade Loan covers enterprises' domestic and overseas transactions.

Eligibility criteria

- Be registered and operating in Singapore
- Have a minimum of 30% local shareholding
- Maximum Borrower Group revenue cap of S\$500 million for all enterprises

STABILISING BUSINESSES

HELPING WITH CREDIT

EFS-SME Working Capital Loan - Finance operational cashflow needs → SMEs will receive greater financing support to bridge their working capital gaps.

→ S\$1 million / borrower

Note: Overall loan exposure limit of S\$50 million per borrower group across all areas.

→ Maximum repayment period – 5 years

→ Interest rates are determined by PFIs in consideration of the risk profile of each loan application.

→ *Enterprises under the Enhanced EFS-WCL may apply for up to 1 year deferral of principal repayment to help manage their debt, subject to assessment by the PFIs.*

Eligibility Criteria

- Be a business entity that is registered and physically present in Singapore
- At least 30% local equity held directly or indirectly by Singaporean(s) and/or Singapore PR(s), determined by the ultimate individual ownership

STABILISING BUSINESSES

HELPING WITH CASH FLOW & COSTS

Deferment of Corporate Income Tax Payments

- **Automatically defer corporate income tax payments for 3 months**
- **Companies:** deferment of payments due in **April to June 2020**

Freeze All Government Fees & Charges

- **Freeze** all government fees and charges for **1 year**, from 1 April 2020 to 31 March 2021

Enhanced Property Tax Rebate for 2020

- **100% rebate** for qualifying commercial properties
- **30% rebate** for other non-residential properties
- COVID-19 (Temporary Measures) Act 2020 introduced to **let businesses and individuals defer certain contractual obligations**, such as paying rent, repaying loans, or completing work, for a period
 - The Act also ensures that **property owners pass on the Property Tax Rebate in full, to tenants**

2) Managing Manpower

- what if there is excess manpower?

Many corporates may have no choice but to reduce salaries and even the number of their employees as part of cost-cutting measures.

1) As an employer, it should be noted that one must [notify MOM](#) if one:

- Implements any cost-saving measures affecting their employees' salaries (excluding adjustments to discretionary payments such as bonuses and increments);
- Has a business registered in Singapore; and
- Have at least 10 employees.

2) One must [notify MOM](#) if one:

- retrenches 5 or more employees within a period of 6 months;
- Has a business registered in Singapore; and
- Have at least 10 employees.

3) Reorganisation/Restructuring to plan ahead

- Re-organise corporate structure
- Transfer headquarters to Singapore
- Sell or acquire entities (at attractive valuations)
- Re-organise entities within a larger group to enjoy cost savings or tax benefits
- Dissolve dormant entities
- Liquidate certain non-performing entities.

Corporate Restructuring

- Streamlining corporate structure

Amalgamation

- Amalgamation allows two or more companies to merge or combine so that the property, rights, privileges, liabilities and obligations of the amalgamating companies are transferred to, and vest in, one amalgamated (either new or continuing) company by 'operation of law' (by the application of the relevant statutory rules under the Companies Act of Singapore and not through agreement or court order).
- Under the standard form amalgamation scheme any two or more companies may combine and continue as one entity. Short form amalgamation is a relatively easier and shorter process which allows members of each Amalgamating Company, by special resolution at a general meeting, to resolve to approve the amalgamation which can be between:
 - (i) a company and one or more of its wholly owned subsidiaries; or
 - (ii) two or more wholly owned subsidiaries of the same parent.

Other corporate actions for capital structure

- Capital reduction
- Share buyback etc.

COVID-19 (Temporary Measures) Act 2020



Weilin Chua
Senior Associate

Roadmap

- COVID-19 (Temporary Measures) Act 2020
- *Force Majeure*
- Frustration



COVID-19 (TEMPORARY MEASURES) ACT 2020 (No.14 of 2020)

Passed by Parliament on 7 April 2020

- Part 1 – Preliminary
- Part 2 – Temporary Relief for Inability to Perform Contracts
- Part 3 – Temporary Relief for Financially Distressed Individuals, Firms and other Businesses
- Part 4 – Temporary Measures for Conduct of Meetings
- Part 5 – Temporary Measures for Court Proceedings
- Part 6 – Temporary Measures concerning Remission of Property Tax
- Part 7 – COVID-19 Control Orders

COVID-19 (TEMPORARY MEASURES) ACT

Preliminary points

- Date of commencement
 - Section 1(2): Parts 1 (except Section 2 on Interpretation), 2 and 3 continue in force for a period of one year beginning on the date of commencement (7 April 2020).
 - Part 1: Preliminary – Interpretation and Prescribed Period
 - Part 2: Temporary Relief for Inability to Perform Contracts
 - Part 3: Temporary Relief for Financially Distressed Individuals, Firms and Other Businesses
 - Section 1(5): Part 4 on Conduct of Meetings is deemed to have come into operation on 7 April 2020.
- Retroactive Effect
 - Covers relevant contractual obligations that are to be performed on or after 1 February 2020 (section 5(1)(a)), for contracts that were entered into or renewed (other than automatically) before 25 March 2020 (section 4(1)).
- Prescribed Time Period
 - Section 3(1): The measures will be in place for a prescribed period, not exceeding six months from the commencement of the Act for Parts 1, 2 and 3.
 - Section 3(2): Minister may extend or shorten the prescribed period.
- Definition of “COVID-19 event” (section 2)
 - (a) the COVID-19 epidemic or pandemic; or
 - (b) the operation of or compliance with any law of Singapore or any country... or an order or direction of the Government or any statutory body...that is made by reason of or in connection with COVID-19.

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

- Section 5 applies to a case where –
 - (a) a party to a scheduled contract, A, is unable to perform an obligation in the Contract, being an obligation that is to be performed on or after 1 Feb 2020;
 - (b) the inability is to a material extent caused by a COVID-19 event; and
 - (c) A has served a notification for relief in accordance with s 9(1) on –
 - (i) the other party or parties to the contract;
 - (ii) any guarantor or surety for A's obligation in the contract; and
 - (iii) such other person as may be prescribed.

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

- Scheduled Contracts, which include the following:-
 - Construction contract or supply contract;
 - Contracts for the provision of goods and services;
 - Certain contracts for goods or services for visitors to Singapore, domestic tourists or outbound tourists, or promotion of tourism;
 - Leases or licences for non-residential immovable property;
 - Hire purchase agreements; and
 - Certain loan facilities granted by a bank or a finance company to SMEs.

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

- Under section 5(3), the Act prohibits a contracting party from taking various legal actions against a non-performing party, including the following (non-exhaustive list):
 - Commencement or continuation of court proceedings or arbitral proceedings under the Arbitration Act against A or A's guarantor;
 - Commencement of insolvency proceedings;
 - Enforcement of security over immovable property as well as movable property that is used for the purposes of business or trade;
 - Call on a performance bond given pursuant to a construction contract;
 - Termination of leases of non-residential premises; and
 - Such other action as may be prescribed.

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

- Duration of Moratorium (section 5(2))

Despite any law or anything in the contract, the counterparty (“B”) may not take any action described in section 5(3) until after the earliest of the following:

- (a) Expiry of the prescribed period (i.e., 6 months);
- (b) Withdrawal by A of A’s notification for relief;
- (c) On an application under section 9(2), the assessor makes a determination that the case in question is not one to which section 5 applies.

- Stay of court proceedings or arbitral proceedings under the Arbitration Act that are pending at the time that A serves the Relief Notification (section 5(8))

“must be stayed on the lodgement by A of a copy of the Relief Notification with the court or arbitral tribunal, until the earliest of the following”:

- (a) expiry of the prescribed period;
- (b) withdrawal by A of A’s notification for relief;
- (c) assessor’s determination that the case in question is not one to which section 5 applies.

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

- Limitation Period (section 5(7))

Any period of limitation prescribed by any law or in any contract is “extended by a period equal to the period beginning on the date of service by A of the notification for relief and ending on the earliest of the following”:

- (a) expiry of the prescribed period;
- (b) withdrawal by A of A’s notification for relief;
- (c) assessor’s determination that the case in question is not one to which section 5 applies.

- Additional relief in respect of forfeiture of deposits for event and tourism-related contracts
 - Counterparty may not, after being served with the Relief Notification, at any time (whether during or after the prescribed period) forfeit any deposit or any part of the deposit on the basis of COVID-19, unless: (i) Relief Notification is withdrawn; or (ii) assessor has made a determination that forfeiture of the deposit is just and equitable. (Section 7(2))
 - If forfeited, must restore on receipt of the Relief Notification (Section 7(3))
 - Inability to perform contractual obligation materially caused by COVID-19 is a defence to payment of cancellation fee (Section 7(4))

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

Summary Framework

1. Is the contract a Scheduled Contract?
2. Was the Scheduled Contract executed before March 25, 2020 with obligations to be performed on or after February 1, 2020?
3. Is the inability to perform such contractual obligations materially caused by a COVID-19 event?

If all the above are true, Relief Notification may be served.

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

- Consequences of Breach
 - Criminal liability – fine not exceeding S\$1,000 if provisions contravened without reasonable excuse (Section 8(1))
 - Proceedings commenced in breach of section 5(2) may be dismissed. (Section 8(2))
- Relief Notification
 - Under section 9(1), A must, if he intends to seek relief, *within the period specified* in regulations made under section 19 (Regulations not yet released), and whether *with or without prior demand for performance*, serve a notification for relief that contains the prescribed information on –
 - (i) the other party or parties to the contract;
 - (ii) any guarantor or surety for A's obligation in the contract; and
 - (iii) such other person as may be prescribed.
 - Under section 9(2), any party to the contract may apply in accordance with section 12 to the Registrar to appoint an assessor.

COVID-19 (TEMPORARY MEASURES) ACT

Part 2: Temporary Relief from Legal Action

- Framework for resolving disputes arising from these measures: Panel of Assessors
 - Assessor may take into account ability and financial capacity of A to perform the contractual obligation, and must seek to achieve an outcome that is just and equitable in the circumstances of the case. (Section 13(2))
 - Powers of assessor are relatively wide (Section 13(3))
 - Envisaged that decisions will be given within 5 days
 - Parties will not be allowed to be represented by lawyers (Section 14)
 - No costs orders - each party bears own costs (Section 15)
 - Decisions made will be binding, final and non-appealable (Sections 13(9) and (10))

COVID-19 (TEMPORARY MEASURES) ACT

Part 3: Measures relating to Bankruptcy and Insolvency

- For individuals:
 - Increasing the monetary threshold for bankruptcy significantly from \$15,000 to \$60,000 – section 20
 - Further, the suitability of an individual for a debt repayment scheme, and the avoidance of bankruptcy, is lifted from \$100,000 to \$250,000 – section 20
- For businesses: Increasing the monetary threshold for insolvency ten-fold from \$10,000 to \$100,000 (for companies/partnerships) – sections 22(1)(a) and 24(1)(a)
- Lengthening the statutory period to respond to statutory demands from creditors from 21 days to 6 months – sections 22(1)(b) and 24(1)(b)
- Directors will be temporarily relieved from their obligations to prevent their companies trading while insolvent if the debts are incurred in the company's ordinary course of business. However, Directors remain criminally liable if the debts are incurred fraudulently. - sections 22(2), 24(2) and 25(2)

COVID-19 (TEMPORARY MEASURES) ACT

Practical Impact of the Act and Further Considerations

- Measures are only temporary
- No automatic relief and importance of Relief Notification
- Importance of Documentation
- Act does not apply to international commercial arbitration or foreign court proceedings
- Other avenues of relief

Conclusion

The key to survival



Questions?

Look for the “Q&A” Box and type in your questions.

For further queries, please drop us an email

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