

Singapore COVID-19 (Temporary Measures) Act, 2020

1. Introduction

On April 7, 2020, the Singapore Parliament passed the [COVID-19 \(Temporary Measures\) Act](#) (“**the Act**”) to alleviate the consequences that the global pandemic has caused to businesses in Singapore. The Act brings into force temporary measures to:

- (i) provide relief from the contractual obligations under a range of scheduled contracts;
- (ii) provide relief to financially distressed individuals, businesses and firms;
- (iii) provide alternative arrangements for the conduct of company meetings;
- (iv) introduce measures for the functioning of the courts through remote communications technology; and
- (v) restrict certain activities by the general public to prevent the spread of COVID-19.

The aforementioned reliefs are available for a period of 6 months, beginning from April 20, 2020, to October 19, 2020 (“**Prescribed Period**”), in the first instance. The period of relief can be revised (*i.e. reduced or increased*) as well but cannot go beyond 1 year.

The Act is divided into 6 parts with different operative dates and periods. They are as follows:

PARTS	DATE OF COMMENCEMENT	OPERATIVE PERIOD
PART 1	April 20, 2020. However, Section 2 of Part 1 became operative from April 7, 2020.	Part 1 (except section 2) continues to remain in force for 1 year from the date of its commencement.
PART 2	April 20, 2020	For a period of one year beginning from the date of its commencement.
PART 3	April 20, 2020	For a period of one year beginning from the date of its commencement.
PART 4	March 27, 2020	No period specified
PART 5	April 7, 2020	No period specified
PART 6	April 22, 2020	No period specified

2. Scheduled Contracts

One of the most significant features of the Act is under Part 2 (*Sections 4-19*) which provides temporary relief to parties of “Scheduled Contracts”¹ who are unable to fulfill their contractual obligations to a material extent due to the pandemic. Any Scheduled Contract

- => executed/renewed on or before March 25, 2020; and
- => containing obligations that ought to be performed on or before February 01, 2020

¹ Scheduled Contracts is defined under section 2 of Part 1 of the Act as a contract within a description of contracts set out in the Schedule appended to the Act, but not one that falls within such description of contracts as may be prescribed

will be subject to the temporary relief provided in the Act.

The list of contracts that have been specified under the Schedule appended to the Act include:

- (i) contract for loan facility given by a licensed bank or finance company to an eligible enterprise and secured against commercial or industrial immovable property, plant, machinery or fixed assets in Singapore used for manufacturing, production or other business purposes;
- (ii) performance bond relating to a construction or supply contract;
- (iii) hire purchase agreement for a plant, machinery or fixed assets used for manufacturing, production or other business purposes, or a commercial vehicle;
- (iv) event contracts;
- (v) supply contracts;
- (vi) tourism-related contracts;
- (vii) a lease or license of non-residential commercial immovable property;
- (viii) Scheduled Contracts where the Government is a counterparty.

Furthermore, the Singapore government has the authority to amend the scope of Scheduled Contracts as time progresses and if circumstances so require.²

3. How to obtain relief

In its press release³ issued on April 20, 2020, the Ministry of Law has stated that it encourages the parties who are unable to perform their contractual obligations because of the pandemic to negotiate with the opposite parties and resolve the matter first. However, if the party wishes to protect itself from legal proceedings and obtain relief under the Act, it must serve a Notice for Relief (“**Notice**”) in the prescribed [form](#)⁴ to the opposite party. The notice sets out the obligation that is or was supposed to be performed, how the inability to perform the obligation was materially caused by a COVID-19 event, and any proposed alternative solution. It is also necessary that the notice is served on any guarantor or surety, and/or the issuer of any related performance bond (if any). The relevant details that the person seeking relief needs to provide are:

- (i) Particulars of the person: name, email address, contact number, etc;
- (ii) Particulars of the other party/parties to the contract, any guarantor or surety, the issuer of a related performance bond (if applicable): name, email address, contact number. etc;
- (iii) Particulars of contract: information about the category of contract, its date, description, the date on which the obligation is or was to be performed, how the inability to perform the obligation was materially caused by a COVID-19 event;
- (iv) Alternative proposal: for the opposite party’s consideration;
- (v) Confirmation of contents of the notice;
- (vi) Contact details for correspondence and service of notice(s) and other documents.

² Section 18

³ Ministry of Law, Singapore, COVID-19 (Temporary Measures) Act Provisions relating to Temporary Reliefs to Commence on 20 April 2020, <https://www.mlaw.gov.sg/news/press-releases/2020-04-20-covid-19-temporary-measures-act-provisions-relating-to-temporary-reliefs-to-commence-on-20-april-2020>

⁴ Section 5(1) (c)

Furthermore, the notice can be sent electronically to the opposite party, guarantor/surety, or issuer of a performance bond (if any) provided that the person seeking relief has their email addresses. For individuals and business entities the prescribed links can be found [here](#) and [here](#) respectively.

4. Reliefs⁵

The relief provided under the Act includes a moratorium on the legal proceedings such as execution, arbitration, insolvency, and bankruptcy proceedings against the party or their guarantor or surety. Furthermore, no enforcement of security over immovable property or movable property used for business purposes can be made during the prescribed period.

Other proceedings such as the appointment of receiver or manager, repossession of any goods used for a trade, business or profession under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, termination of leases or licenses of immovable property in connection with non-payment of rent or other sums of money, the exercise of a right of re-entry or forfeiture under a lease or license of immovable property have also been temporarily barred.

Further, the Act provides for relief to certain sectors that have been significantly hit on account of the pandemic. For example, in the construction sector,⁶ performance bonds that are expiring in 7 days or less can be extended on application to the issuer of the bond and notification to other contractual parties. This extension is for a period of 7 days after the end of the relief period or as agreed between the parties to the contract. Moreover, contractors will not be liable for liquidated damages, delays, or non-supply of goods occurring on or after February 1, 2020.

Similarly in tourism-related contracts,⁷ if a party has cancelled or postponed travel due to COVID-19 restrictions, the opposite party of the contract is prohibited from forfeiting the deposits paid and on obtaining the notice for relief, the opposite party must, as soon as practicable, restore the deposit or part of the deposit as if it had not been forfeited. Furthermore, no cancellation fee is to be charged where the inability to perform was materially due to the pandemic.

5. Duration of reliefs

The relief provided under the Act lasts until either of the following occurs: (i) expiry of the statutory relief period, (ii) the withdrawal of the prescribed notice for relief, or (iii) when an assessor determines that the temporary relief provisions should not apply.⁸

6. Force Majeure clauses and Frustrated Contracts

Another interesting feature of the Act is that contracts having force majeure clauses and the frustrated contracts will prevail over the legislation. Thus, businesses in Singapore will have to first scrutinize their contracts for such clauses and also take a look at the available evidence to determine whether the non-performance is materially due to a COVID-19 event or otherwise. That way, they

⁵ Section 5(3)

⁶ Section 6

⁷ Section 7

⁸ Section 5(2)

can better understand and strategize whether they should assert force majeure and/ or attempt to show that the contract has become frustrated and/or rely on the Act.

7. Dispute regarding claiming relief - Role of Assessors

The Act provides for the appointment of a panel of independent assessors to determine disputes regarding availing the temporary relief under the Act.⁹ The aggrieved party can make an application to the assessors for a determination and the assessors can, in addition to their determination, grant any other relief that is “just and equitable.”¹⁰ The assessor’s determination is binding on the parties and will not be appealable. Further, any non-compliance with the assessor's determination is a criminal offense under the Act.¹¹ Any person who contravenes any of the reliefs/restrictions (*listed in para 2 above*) shall be held liable to a fine of up to SGD 1,000. In case any court or arbitral proceedings have been commenced in breach of the restrictions under the Act, they shall be dismissed and any actions taken/orders passed shall be declared void.

Interestingly, the Act has also denied legal representation to parties in any proceeding before the panel of assessors. Parties have to appear in person and bear their own costs.¹²

8. Other features

- (i) **Relief for financially distressed individuals, firms, and businesses:** Part 3 (*Sections 20-26*) of the Act provides temporary relief for individuals and businesses of Singapore in financial distress. Under this Part, the Act increases the threshold for initiating Insolvency proceedings from SGD 10,000 to SGD 100,000 and Bankruptcy proceedings from SGD 15,000 to SGD 60,000. The Act also increases the period to satisfy or set aside a statutory demand from the creditors to 6 months from the existing period of 21 days. This increase in threshold and statutory period will act as a safeguard for the companies suffering from financial losses due to the pandemic. Furthermore, to ensure that companies have the confidence to continue to trade through the pandemic and return to viability when the crisis has passed, changes have been introduced in the Companies, LLP, and Business Trusts Act. As a result of the amendment, directors, partners, and trustee-managers have been temporarily relieved from their obligations to prevent their companies from trading while insolvent if the debts are incurred in the company’s ordinary course of business and during the period that the Act is in effect. The directors, however, will nevertheless remain criminally liable if the debts are incurred fraudulently.
- (ii) **Measures for conducting meetings:** In a respite to the companies, Part 4 (*section 27*) of the Act allows them to make alternative arrangements for meetings where personal attendance of its members and/or directors is necessary. The Act encourages the use of electronic modes for conducting meetings including voting, the tabling of questions and responses to questions as well as other measures such as reducing the quorum, proxy voting, deferral of meeting, etc. This provision will be particularly helpful to companies with

⁹ Section 11

¹⁰ Section 13

¹¹ Section 16

¹² Sections 14 & 15

directors or shareholders located abroad who are unable to travel to Singapore due to the various travel bans in place.

- (iii) **Measures for Court Proceedings:** Given that the social distancing measures are in place the Act unsurprisingly advocates the adoption of remote audio or video technology to conduct Court proceedings including taking statements from the witnesses and the accused.¹³ These measures will continue to remain in force till the time the government COVID-19 control measures are in place. Power has also been given to the Chief Justice to notify a further period to conduct court proceedings safely and efficiently.
- (iv) **Measures for the remission of property tax:** Part 6 (*Sections 29-33*) of the Act provides that the benefit of any property tax remission granted by the government to property owners in response to the COVID-19 pandemic must be fully passed on to their tenants. Such passing of benefit must be unconditional and cannot be subject to any re-negotiations over the lease terms. Any such re-negotiations shall be deemed to be void. Furthermore, owners have to keep records evidencing compliance with the regulations for 3 years after the end of the period of remission.

9. Lessons for India

The COVID-19 pandemic has certainly resulted in creating a global crisis with several countries facing the prospect of a deep economic predicament. In India, the central government has actively been taking measures across all frontiers and, on March 24, 2020, announced a complete lockdown in the country except for some essential services. To assist corporate India, the Minister of Finance and Corporate Affairs also came out with a slew of relief measures to ease statutory and regulatory compliance.¹⁴ Some of these include relaxation in payment of taxes, conducting board meetings through video-conferencing, increasing the threshold for default under the IBC, etc. The RBI has also come out with several measures in the form of rate cuts, a moratorium on loans, and measures to preserve financial stability.¹⁵

Despite all the relief measures, the government is yet to provide any cogent relief vis-à-vis performance of commercial contracts. While ministries such as [Finance \(procurement division\)](#), [Shipping](#), and [Renewable energy](#) have declared that the COVID-19 pandemic may be considered as a “natural calamity” and “force majeure” clauses may be invoked, the relief is available only in certain sectors and that too where the government itself is a contracting party. In the absence of any relief for private parties, most are exploring the possibility to invoke force majeure or apply the doctrine of frustration,¹⁶ both of which are likely to result in commercial disputes and, perhaps, contrasting

¹³ Section 28

¹⁴ PIB, Finance Minister announces several relief measures relating to Statutory and Regulatory compliance matters across Sectors in view of COVID-19 outbreak, <https://pib.gov.in/PressReleasePage.aspx?PRID=1607942>; PIB, Finance Minister announces Rs 1.70 Lakh Crores relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona Virus, <https://pib.gov.in/PressReleasePage.aspx?PRID=1608345>

¹⁵ RBI, Governor’s Statement - Seventh Bi-monthly Monetary Policy Statement, 2019-20, https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3847; RBI, Governor’s Statement, April 17, 2020, https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3853

¹⁶ Section 56 of the Indian Contract Act, 1872

judgments¹⁷ on the impact of the pandemic. Needless to say, this will also burden the already overburdened judicial system.

Therefore, India needs to learn from Singapore and pass a legislation, especially if it wants its MSME sector to withstand the pandemic. A statute, that will allow at least corporate India to defer its contractual obligations for a limited period, will go a long way in building confidence in the economy. Temporary reliefs such as deferring rent, disallowing encashment of bank guarantees, or not penalizing parties for the delay in supplies would prevent some sectors (*like infrastructure, aviation, travel, and hospitality*) from collapsing. Another important lesson that can be taken from Singapore is to promote mediation so that conflicts can be resolved without additional burden on courts. This will also ensure that parties are not spending hard-earned on protracted litigation but cutting losses through pragmatic, business-friendly settlement attempts.

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¹⁷ Halliburton Offshore services v Vedanta O.M.P (I) (COMM) & I.A. 3697/2020(Delhi) & Standard Retail Pvt. Ltd v M/s. G. S. Global Corp & Ors. Commercial Arbitration Petition (I) No. 404 of 2020(Bom)