



Industry  
**Wed-Binar**  
Series



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**08**  
**July**  
**2020**

4 - 530pm

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**COVID-19**  
**Now & Surviving the Future**  
**- A roadmap for SME legal rights**

Organised by:



## *Synopsis*

Focus on SME concerns under the COVID-19 (Temporary Measures) Act:

- Manufacturing
- Tenancies
- Construction/Renovation

**Speaker:**



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- Applicable periods for relief
- Which contracts are covered?
- Actions prevented/ not prevented – what am I still liable for?
- How/when to notify for relief? Relief automatic/backdated?

## *Outline*

- Must a notified party apply to assessor if he disagrees that notification applies?
- Legal impact of a determination by an assessor/ no application for determination – Adjudication/Court/Arbitration
- What now for the future – What happens on 20 October 2020?

*\*This presentation does not constitute legal advice. You are strongly advised to seek independent legal advice before relying on any part of this presentation.*

## *Applicable periods for relief*

- only applies to obligations to be performed on or after **1 February 2020**
- only for contracts that entered into **before 25 March 2020**
- starts **20 April 2020** - 6 month period for temporary relief ending on **19 October 2020**

## ***SCOPE OF THE ACT – KEY AREAS***

- Leases and Rental agreements for commercial equipment/commercial vehicles (from 20 June)
- Loans secured against commercial/industrial property/ plant, machinery, fixed assets in SG where used for manufacturing, production, businesses
- Construction/supply contracts; performance bonds; temporary relief/permanent relief

## ***What is a COVID-19 event in law?***

*“operation of or compliance with any law of Singapore or another country .., or an order or direction of the Government or any statutory body, or of the government or other public authority of another country,..being any law, order or direction that is made by reason of or in connection with COVID-19”*

## *How do I know when relief applies due to a COVID-19 event?*

- “inability is to a material extent caused by a COVID-19 event”

Qn: What is a “*material extent*”?

## ***Leases/licenses – generally***

- No termination of lease or license of immovable property where the inability is the non-payment of rent or other monies
- No right of re-entry; forfeiture

## *Leases: new rental framework (3 June)*

- 2 months relief (April/May) of base rental cost for commercial properties/ 1 month for industrial/office properties (April) – **govt.**
- Significant drop in revenue: Additional 2 months waiver base rental comm. properties /1 month i&c properties – **landlord**
- Also applies to sub-tenants

## ***Leases: new rental framework (3 June)***

- Can be offset against previous Property Tax Rebates (1.2 months)
- Landlord can also seek assessment for financial hardship if unable to provide additional month
- SMEs who qualify for landlord relief - repayment scheme for rental arrears; interest cap.

## ***Leases: new rental framework (3 June)***

- Relief for tenants unable to vacate business premises
- Notification for relief subject to conditions
- *Not liable* to landlord for failing to vacate – temporary/permanent relief?
- For expected implementation “in end-July”

## ***Key actions prevented during relief period***

- starting/continuing Court/arbitration proceedings
- enforcement of Court judgment or arbitral awards
- enforcement of adjudication determination
- enforcement of security over trade property e.g. machinery
- insolvency related applications e.g. scheme/JM/winding-up/bankruptcy

## *Actions not prevented*

“...does not affect —  
(a) any right or obligation under the contract that accrues or rises at any time before or after the period mentioned in subsection (6); or (b) any judgment, arbitral award, adjudication determination under the Building and Construction Industry Security of Payment Act, compromise or settlement given or made before the service of the notification for relief.”

## *Actions not prevented*

- What about other contract issues for legal proceedings not related to COVID-19?
- Is a statutory demand to my company before 20 April 2020 giving a 3 weeks deadline valid?

## Construction – Liquidated damages and inability to perform

Inability to perform contract from 1 Feb 2020 to 19 Oct 2020:

- to be disregarded for LD calculation
- is a defence to a claim for breach of contract for that inability to perform

## Construction – are bond calls prevented?

- No calls on performance bonds until 7 days before expiry
- Can extend bond expiry but does not stop calls if extension done late

## Construction – are bond calls prevented?

- **Not** a full prohibition c.f. MinLaw-BCA 22 April FAQ :  
*“call on a performance bond (or equivalent) by the non-defaulting party **will be prohibited** for the prescribed period of 6 months”*
- Relief only applies if notification given under Section 5

Qn: What if bond expiry is *after 19 October 2020*?

## *How long does temporary relief last?*

- Notification for Relief must be applied for
- Withdrawal of Notification for Relief by applicant
- Assessor determines that Section 5 does not apply.
  
- 6 months from **20 April 2020: 19 October 2020**

*Note: may be extended by the Minister for Law for up to one year*

## *Role of an assessor*

- To decide if the inability to perform (Section 5) is due to Covid-19
- Require party to do anything/pay money to discharge obligation under a contract;
- Rental deposits forfeited/retained
- Return goods/immovable property forfeited

## *Effect of determination*

- Judgment can be entered
- an assessor's determination is **binding and there is no appeal: Section 13(9) and (10)**

Qn: will the decision be fair?

## *Is it mandatory to apply for assessor determination?*

- Reliefs still apply
- Offence under the Act if action taken; fine not exceeding \$1,000
- Dismissal of proceedings brought in breach of Act
- Bond call/forfeiture void

## ***Role of an assessor (construction only)***

- Only to decide if the inability to perform (Section 5) is due to Covid-19
- Assessor not to assess or determine the extent of delay that is attributable to COVID-19, or LDs or damages payable: Reg. 22

## Should I still apply for assessor determination? *(construction only)*

- “MinLaw-BCA: “the party who served the Notification for Relief would have to demonstrate to the adjudicator, the court or the arbitral tribunal (as the case may be), that the delay or breach was in fact caused to a material extent by COVID-19, and the non-defaulting party would similarly have the opportunity to dispute the defence that is raised.”

## *Is there an automatic EOT granted in law for construction projects?*

- statutory defence to imposition of liquidated damages
- defence to claim for breach of contract for inability to perform

## *Is there entitlement to prolongation because of the Act?*

- Silent on prolongation
- MinLaw-BCA: “in the event a party is entitled to apply for an extension of time under the contract, **the party should do so**, in which case there will be no delay and **the COVID-19 Act will not be triggered**”

## *What now for the future?*

- When should I serve a notification for relief?
- Will the Act be useful for me to overcoming liquidity issues during this time?
- What happens on 20 October 2020?

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