

30 September 2020

## COVID-19 (TEMPORARY MEASURES) ACT 2020 – COMMENCEMENT OF PART 8 RELIEF FOR CONTRACTS AFFECTED BY CONSTRUCTION DELAYS

### Objective

This information note informs the built environment sector of the commencement of **Part 8** of the COVID-19 (Temporary Measures) Act (“**COVID-19 Act**”) on **30 September 2020**, which provides relief for specified contracts affected by construction delays due to COVID-19.

### Background

2 The COVID-19 Act was enacted in April 2020 to put in place a suite of legal reliefs and mechanisms to support businesses and individuals, and help them ride out the COVID-19 pandemic. These measures apply to certain contractual obligations that are to be performed on or after 1 February 2020 under specified contracts that were entered into before 25 March 2020. Construction contracts and supply contracts for the built environment sector are among the types of contracts covered under the COVID-19 Act.

3 Part 8 of the COVID-19 Act complements the above measures, by providing a mechanism for parties to specified contracts to obtain relief if they are affected by a delay or breach in a construction or supply (or related) contract, and such delay or breach is materially caused by COVID-19.

### Reliefs under Part 8 of the COVID-19 Act relevant to the built environment sector

4 For the built environment sector, Part 8 of the COVID-19 Act and its accompanying regulations<sup>1</sup> will provide a mechanism for a person to obtain relief, if ***that person has rented plant or materials for use in connection with the carrying out of construction work, that person is or will be liable for additional rental expenses due to a delay or breach in a separate construction or supply (or related) contract, and that delay or breach is due to COVID-19.*** An illustration of such a situation is shown below.

***Illustration:*** Contractor A rented scaffolding materials from Supplier B for the purpose of performing construction work. Due to the COVID-19 situation, the construction works on site, performed by Contractor A for another Contractor C, are delayed by 4 months during the period of April 2020 to July 2020. Contractor A will be liable for additional rental expenses as the construction works will now take longer than originally expected, and A has to extend the rental period under its contract with Supplier B. **Contractor A may be eligible to seek relief under Part 8 of COVID-19 Act against Supplier B in respect of the additional rental expenses that arise due to the delay in the construction works.**

<sup>1</sup> These are, namely, the COVID-19 (Temporary Measures) (Part 8 Relief) Regulations 2020.

5 Eligibility. To be eligible for relief under Part 8 of the COVID-19 Act:

- The Applicant must be a party to a contract for the rental of plant or materials that are used for construction work (**the “affected contract”**).
- The affected contract must: (i) have been entered into before 25 March 2020, and (ii) be in force at any time between 1 February 2020 and 31 March 2021 (both dates inclusive).
- The Applicant is or will be liable for additional rental expenses because of a delay or breach in a separate construction or supply (or related) contract, and this delay or breach is materially caused by COVID-19, and occurred between 1 February 2020 and 31 March 2021 (both dates inclusive).
- The Applicant could not have avoided the additional rental expenses by taking reasonable steps.

6 Application for relief. **Parties are strongly encouraged to negotiate with the other party to reach a suitable compromise before applying for relief under Part 8.** If the parties are unable to resolve the matter themselves, the person who rented the plant or materials may apply for relief under Part 8 by submitting an application to the Registrar. Details of the application process are available on the Ministry of Law’s website (<https://go.gov.sg/part8application>). Please note that if the applicant has served its application for relief under Part 8 on the other party to the contract, then the other party may not commence any court or arbitral proceedings or make an adjudication application under the Building and Construction Industry Security of Payment Act (SOPA) against the applicant in relation to the subject of the application.

7 ***If it would be just and equitable in the circumstances, the Assessor may adjust the contractual terms relating to the date by which the renter must return the goods or the rental rate payable for the duration that the renter holds possession of the goods.*** Please note that the Assessor will not make a determination on the final amount owed to the supplier; this may depend on other factors or clauses in the contract besides the rental rate and the return date. After a determination is made by the Assessor, the parties may rely on the Assessor’s determination in subsequent dispute resolution proceedings – such as adjudication (under SOPA), arbitration or litigation.

8 Where a supplier has made an adjudication application under SOPA before the contractor has applied for relief under Part 8, the SOPA adjudicator is empowered under the COVID-19 Act to take into account the effects of COVID-19 and make equitable adjustments to the date by which the renter must return the goods and/or the rental rate payable for the duration that the renter holds possession of the goods. This is similar to the powers which Assessors can exercise under Part 8 of the COVID-19 Act.

9 For the application of the COVID-19 Act to specific disputes in the built environment sector, please refer to the COVID-19 Act or seek legal advice. For more details on Part 8 of the COVID-19 Act, please refer to the resources and FAQs uploaded on the MinLaw’s website (<https://go.gov.sg/part8relief>). Any queries should be sent through < <https://eservices.mlaw.gov.sg/enquiry/> >.

Ministry of Law  
and  
Building and Construction Authority