

22 April 2020

COMMENCEMENT OF THE COVID-19 (TEMPORARY MEASURES) ACT 2020 - PROVISIONS RELATING TO TEMPORARY RELIEFS

Objective

This information note informs the built environment sector of the commencement of the provisions relating to temporary reliefs under the COVID-19 (Temporary Measures) Act (“COVID-19 Act”) **from 20 April 2020**.

Background

2 The COVID-19 pandemic and associated public health measures imposed by governments around the world have had unprecedented and unforeseeable social and economic impact. The built environment sector has felt and continues to feel the impact of COVID-19 on several fronts. There are supply chain disruptions and manpower shortages, among other consequences. In many cases, this has undermined the ability of individuals and businesses to fulfil contractual obligations, and it would be unfair to hold them strictly liable for their failure to do so.

3 The COVID-19 Act provides temporary and targeted protection for businesses and individuals who are unable to perform certain types of contractual obligations, where such inability is materially caused by COVID-19. Construction contracts and supply contracts for the built environment sector are among the types of contracts covered in the COVID-19 Act.

4 The COVID-19 Act **imposes a moratorium on certain legal actions, so that parties have time to negotiate and work out their differences without the threat or uncertainty of legal proceedings**. The measures apply to contractual obligations that are to be performed on or after 1 February 2020 and only for contracts that were entered into before 25 March 2020. The prescribed period of relief will be for six months, from 20 April 2020 to 19 October 2020, in the first instance.

Reliefs Applicable to the Built Environment Sector

5 In general, the COVID-19 Act covers construction contracts and supply contracts as defined under section 2 of the Building and Construction Industry Security of Payment Act. It will help parties, such as contractors, who are unable to perform their contractual obligations due materially to COVID-19. In addition to the temporary reliefs available to all contracts covered under the COVID-19 Act (i.e. temporary moratorium from court or arbitration proceedings), parties in construction and supply contracts are entitled to additional relief mentioned below if they are unable to supply goods or services due to COVID-19.

6 First, the call on a performance bond (or equivalent) by the non-defaulting party will be prohibited for a prescribed period of 6 months (until 19 October 2020). Second, any liquidated damages or other damages payable under the contract due to delays sustained in the period

starting from 1 February 2020 to 19 October 2020 caused materially by COVID-19 are to be disregarded. Third, the fact that a party was unable to perform an obligation to supply goods or materials due materially to COVID-19 is a defence to a claim for a breach of contract.

Obtaining relief under the COVID-19 Act

7 Parties who are unable to perform their contractual obligations are encouraged to negotiate with the other party to reach a compromise.

8 If the parties are unable to resolve the matter themselves, the party seeking relief under the COVID-19 Act (e.g. contractor) will have to **serve a Notification for Relief during the prescribed period** on the non-defaulting party (e.g. developer), the guarantor or surety of the contractual obligation, and the issuer of a related performance bond (if any). The Notification for Relief must contain information as prescribed in the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020.

9 The Notification for Relief could seek relief in respect of an existing or impending claim in respect of the defaulting party's inability to fulfil their contractual obligations due materially to COVID-19, for example where the firm is unable to complete the construction project within the time for completion, and the non-defaulting party has not yet made a claim against the defaulting party.

10 Once the Notification for Relief is served, the non-defaulting party is prohibited from taking certain types of legal actions to enforce the obligation for the prescribed period. These include commencing or continuing an action in court.

11 If the non-defaulting party does not agree that the defaulting party who served the Notification for Relief is entitled to relief, the parties should first try to reach a mutual agreement. If the parties are still unable to reach a compromise, either party may make an Application to the Panel of Assessors for COVID-19 Temporary Relief (**PACT**) for an Assessor's Determination. Details of the PACT application process are available on the Ministry of Law's website (<http://www.mlaw.gov.sg/covid19-relief>).

12 For construction contracts and supply contracts, **the Assessor's determination will be limited to (a) whether the party to the construction or supply contract is unable to perform an obligation; and (b) whether the inability is to a material extent caused by COVID-19.** The Assessor would not assess or determine the extent of delay that is attributable to COVID-19, the amount of liquidated damages or damages payable, nor whether the defence in section 6(6) of the COVID-19 Act is made out.

13 After a determination is made by the Assessor, the parties may rely on the Assessor's determination in subsequent legal or other dispute resolution proceedings – either adjudication (under the Building and Construction Industry Security of Payment Act), arbitration or litigation. **The substantial merits and defences will be decided separately in these proceedings between the relevant parties, separate from the regime under the COVID-19 Act.**

14 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. You may also refer to the FAQs enclosed with this information note for more information.

Ministry of Law
Building and Construction Authority

enc. [Frequently Asked Questions \(FAQS\) for the Built Environment Sector](#)