
Corporate Real Estate

Commencement of Part 8C of the COVID-19 (Temporary Measures) Act 2020

Introduction

On 1 July 2021, Part 8C of the COVID-19 (Temporary Measures) Act 2020 ("**Act**") ("**Part 8C**") and the subsidiary legislation in the COVID-19 (Temporary Measures) (Part 8C Relief) Regulations 2021 ("**Part 8C Relief Regulations**") came into operation.¹

On 3 November 2020, the COVID-19 (Temporary Measures) (Amendment No. 3) Act 2020 was passed in Parliament as part of the Singapore Government's support for the construction sector which has been severely affected by the COVID-19 pandemic. On 5 April 2021, the COVID-19 (Temporary Measures) (Amendment No. 2) Act 2021 was passed to further amend the Act so as to facilitate the implementation and delivery of the reliefs under Part 8C.

Part 8C serves to provide support to developers who face delays in the construction of properties due to the pandemic and are unable to meet the date of delivery of vacant possession to purchasers under the Sale and Purchase Agreement ("**SPA**"). Part 8C also allows purchasers to seek, from developers, a reimbursement (capped at a certain sum) of qualifying expenses as a result of the delay in delivery of vacant possession under the SPA. An Assessor's determination may also be sought if there is any dispute over the qualifying costs claimed by purchasers. The Part 8C Relief Regulations should be read with Part 8C of the Act as it provides for details such as the prescribed forms, manner and timelines that developers and purchasers must take note of when seeking the reliefs under Part 8C.

Extension of Date of Delivery of Possession under Part 8C

Part 8C allows developers who are unable to meet the date of delivery of possession of a housing accommodation or commercial property ("**unit**") to extend the time beyond the date of delivery set out in the SPA to deliver the unit to their purchasers without being liable to pay liquidated damages for late delivery up to the extended period.

Contribution Note: This Client Update was written with contributions from Jolene Loh, Practice Trainee, from Corporate Real Estate.

¹ For more details, please refer to URA's Circular No. URA/COH/Circular-2021-01 (accessible [here](#)); the COVID-19 (Temporary Measures) Act 2020 (accessible [here](#)); and the COVID-19 (Temporary Measures) (Part 8C Relief) Regulations 2021 (accessible [here](#)).

Client Update: Singapore

2021 JULY

Corporate Real Estate

The delivery date under the SPA may be extended by up to 122 days after that delivery date, subject to the qualifying conditions as set out below. The developer may also extend the delivery date one or more times except that the total period of all extensions must not exceed 122 days, subject to the provisions under Part 8C.

Pursuant to Section 39I(3) of the Act, the developer may apply to an Assessor (as appointed under the Act) for the delivery date to be extended for a period exceeding 122 days, provided that the developer has already extended the original delivery date by a total period of 122 days as aforementioned and complies with the process as described below.

Qualifying Conditions and Applicability of Part 8C

Part 8C allows for an extension of the date of delivery of possession in relation to an SPA that fulfils the following conditions:

- (a) the SPA was entered into between —
 - (i) a housing developer and a purchaser for the sale and purchase of housing accommodation,² before 25 March 2020 or pursuant to an option granted before 25 March 2020;
 - (ii) a commercial developer and a purchaser for the sale and purchase of commercial property,³ before 25 March 2020 or pursuant to an option granted before 25 March 2020; or
 - (iii) the Housing and Development Board ("**HDB**") and a purchaser for the sale and purchase of housing accommodation or commercial property where an option was granted before 25 March 2020;
- (b) the agreement provides for a delivery date that is on or after 1 February 2020;
- (c) a permit to carry out structural works in any building works was granted by the Building and Construction Authority before 7 April 2020;
- (d) a Temporary Occupation Permit ("**TOP**") has not been granted as at 7 April 2020; and
- (e) no court or arbitral proceedings have been commenced before 2 November 2020 for the failure of the developer to deliver possession.

Process for Extending the Delivery Date

Extension of up to 122 days

To extend the delivery of possession by up to 122 days under Part 8C, the developer must serve a written notice on the purchaser of the period of the extension in the prescribed form (accessible [here](#))

² Under s 39G of the Act, "housing accommodation" includes a building or tenement wholly or principally constructed, adapted or intended for human habitation, or for human habitation and as business premises.

³ Under s 39G of the Act, "commercial property" means any building or other premises which are permitted by or under any written law for use for a commercial or an industrial purpose, or for mixed purposes the predominant purpose of which is a commercial or an industrial purpose.

Client Update: Singapore

2021 JULY

Corporate Real Estate

and manner and within the prescribed time. As mentioned above, more than one notice may be served on the purchaser, provided that the total extension period does not exceed 122 days.

Importantly, developers should take note of the prescribed timelines as to when the notice must be served on purchasers:

- (a) unless sub-paragraph (b) below applies, notice has to be served on purchasers by 29 July 2021; and
- (b) for projects issued with TOP and Certificate of Statutory Completion ("**CSC**") on or after 1 July 2021, notice has to be served on purchasers before the expiry of 28 days after TOP or CSC is granted, whichever is earlier.

Extension beyond 122 days

If the developer requires an extension of the delivery date beyond 122 days from the date of delivery stipulated in the SPA, the developer must have already extended the original delivery date by a total period of 122 days as aforesaid. The developer must notify the purchaser of its intention to extend the delivery date and of the proposed period of extension in the prescribed form (accessible [here](#)) and manner and within the prescribed time as set out below. In addition, the developer must apply for an Assessor's certification in the prescribed form (accessible [here](#)) and manner and within the prescribed time. If the Assessor (as appointed under the Act) certifies that the developer's inability to deliver possession of the unit by the delivery date in question is to a material extent caused by a COVID-19 event, and that the developer may only be reasonably expected to deliver possession by the end of a specified period after the delivery date in question, then the delivery date in question may be extended by the specified period. Subsequently, the developer will have to notify the purchaser of the Assessor's certification on the extended delivery date in the prescribed form (accessible [here](#)) and manner and within the prescribed time.

Developers should take note of the following prescribed timelines as to when the notice of their intention to extend the delivery date beyond 122 days must be served on purchasers:

- (a) the notice has to be served on purchasers any time after the developer has extended the original delivery date by a total period of 122 days; but
 - (i) unless sub-paragraph (ii) below applies, before 29 July 2021; and
 - (ii) for projects issued with TOP and CSC on or after 1 July 2021, before the expiry of 28 days after TOP or CSC is granted, whichever is earlier.

Part 8C also provides for a moratorium on the taking of certain actions (e.g. making any deduction from any instalment or payment for any damages or liquidated damages under Section 39J(2)(a) of the Act, and any prescribed action set out in Regulation 11 of the Part 8C Relief Regulations) in relation to the developer's failure to deliver possession of the unit to the purchaser by the original delivery date prescribed in the SPA or by the extended delivery date. Pursuant to Section 39J(3) of the Act and Regulation 12(1) of the Part 8C Relief Regulations, the moratorium period starts on the day on which

Client Update: Singapore

2021 JULY

Corporate Real Estate

the purchaser is notified by the developer of its intention to extend the delivery date beyond 122 days, and ends on the earlier of the following:

- (a) the day the purchaser is notified of the Assessor's certification; or
- (b) the 'prescribed date', which is:
 - (i) unless sub-paragraph (ii) below applies, the last day of 252 days after the date on which the developer notifies the purchaser of the developer's intention to extend the delivery date;
 - (ii) for projects issued with TOP and CSC on or after 1 July 2021, the last day of 252 days after TOP or CSC is granted, whichever is earlier.

Despite the above, Regulation 12(2) of the Part 8C Relief Regulations states that the 'prescribed date' is (if earlier than the prescribed date under sub-paragraphs (b)(i) and (b)(ii) above) the last day of 21 days after the date on which the Registrar notifies the developer of: (1) the Assessor's determination of whether the developer is unable to deliver possession by the delivery date in the SPA and whether the inability is to a material extent caused by a COVID-19 event; and (2) the Assessor's determination and certification of the period at the end of which the developer may reasonably be expected to deliver possession.

Right of Purchasers to Claim for Qualifying Costs

For development projects where the developer has extended the date of delivery of possession, purchasers may seek reimbursement from the developer for qualifying out-of-pocket costs incurred due to the delay in delivery of the unit, up to a cap of 70% of the liquidated damages originally payable under the SPA. Similarly, purchasers of flats from HDB may claim up to 70% of the liquidated damages based on a prescribed formula,⁴ which is aligned to that as stated in the Housing Developers Rules for private housing. This approach allows for co-sharing of the delay costs between developers and purchasers.⁵

An Assessor's determination may be sought if there is any dispute over the qualifying costs claimed by purchasers.

What May Be Claimed

The developer would only be liable to the purchaser for the qualifying costs incurred, up to the prescribed amount, as a result of the delay in delivery of vacant possession. "Qualifying costs" is defined under Section 39G of the Act and such costs have been prescribed in Regulation 3 of the Part 8C Relief Regulations, and includes the following:

- (a) costs incurred by purchasers for securing alternative housing accommodation or alternative commercial property, or extending a lease agreement (e.g. stamp duty, legal fees or estate agent fees);

⁴ The prescribed formula is set out in Regulations 13(1)(a) and 13(2)(a) of the Part 8C Relief Regulations (accessible [here](#)).

⁵ URA's Circular No. URA/COH/Circular-2021-01 published on 1 July 2021 at para 5.

Client Update: Singapore

2021 JULY

Corporate Real Estate

- (b) rent for such alternative premises during the period of delay;⁶
- (c) moving costs to move to the alternative premises;
- (d) costs for the storage and transportation of items (e.g. furniture and appliances, etc.) that would have been stored in the unit incurred for the period of delay; and
- (e) penalty for the early termination of an existing lease agreement, if the end date of the lease is after the extended delivery date of the unit of the development (subject to a cap of one month's rent).

In this regard, the purchaser would not be able to claim for losses such as opportunity costs (e.g. loss of rental income from the unit) or interest paid on mortgage loan for the unit.⁷ Further, the developer would not be liable for any other cost, expense, loss or other sum that the developer would, but for the extension or extensions, be liable to pay under any law or the SPA for failing to deliver possession of the unit or units in question on or before the original delivery date stated in the SPA.⁸

Process for the Purchaser's Claim

Upon being served the notice by the developer for the extension of the delivery date, purchasers may submit claim(s) for qualifying costs in the prescribed form (accessible [here](#)) and manner, and within the prescribed time,⁹ accompanied with supporting documents to the developer. After the claim is submitted, the developer and purchaser would discuss the claim amount.

Where the purchaser makes a claim for reimbursement, the purchaser may set off, against any instalment or other payment payable by the purchaser to the developer under the SPA, the amount that the developer must pay to the purchaser in respect of the claim. The purchaser may also take any action to recover from the developer, as a debt due to the purchaser, the amount that the developer must pay to the purchaser.¹⁰ However, a purchaser may only set off and/or take such action to recover from the developer, as set out above, after the prescribed time.¹¹

However, if the developer and purchaser are not able to reach a mutually agreed arrangement:

⁶ Under s 39G of the Act and Regulation 4 of the Part 8C Relief Regulations, "rent" includes any licence fee and any matter that is prescribed as being rent, but excludes any service charge and maintenance charge and any other matter that is prescribed as not being rent, and does not include any security deposit. The period of delay refers to the relevant period of time as described in paragraph (a) of the definition of "qualifying costs" under s 39G of the Act.

⁷ As stated in URA's COVID-10 (Temporary Measures) Act Part 8C Infographic found in Annex A to Circular No. URA/COH/Circular-2021-01 published on 1 July 2021 (accessible [here](#)).

⁸ Section 39K(1)(b) of the Act.

⁹ The prescribed time is set out in Regulation 14(2) of the Part 8C Relief Regulations (accessible [here](#)).

¹⁰ Section 39K(5) of the Act.

¹¹ Under s 39K(5) of the Act, a purchaser may only set off and/or take any action to recover from the developer after the "prescribed time". The "prescribed time" as set out in Regulation 14(4) of the Part 8C Relief Regulations refers to:

- (a) in a case where no application is made by a developer or purchaser for an Assessor's determination as to the amount that the developer is liable to reimburse the purchaser (under s 39L(1)(b) of the Act) – any time after the expiry of 28 days after the date the purchaser makes the claim for reimbursement; or
- (b) in any other case – any time after the expiry of the period of 21 days after the date the Registrar notifies the developer of the Assessor's determination under s 39O(1)(b) in relation to an application under s 39L(1)(b) of the Act.

Corporate Real Estate

- (a) the developer may apply for an Assessor's determination of the amount of qualifying costs to be paid to the purchaser in the prescribed form (accessible [here](#)) and manner, and within the prescribed time, and notify the purchaser of the said application;¹²
- (b) if the developer's application is in order, the Registrar of Assessors will invite the purchaser to serve a Response to provide additional information on the claim, if any;
- (c) the Registrar will inform the developer and the purchaser of the outcome after the Assessor makes a determination of the amount to be paid;
- (d) the developer would then be required to pay the purchaser the amount as determined by the Assessor; and
- (e) the decision of the Assessor is final and binding on all parties. There is no appeal from the Assessor's determination.

After an Assessor makes a determination of the amount of reimbursement the developer is required to pay to the purchaser ("**the original determination**"), the Assessor or another assessor may, either on his own motion or on the application of all or any of the persons to whom the original determination relates, vary or replace the original determination if:

- (a) one of those aforesaid persons adduces further information or documents after the original determination which would have had a material influence on the original determination but which could not have been earlier obtained with reasonable diligence for use at the proceedings before the Assessor; and
- (b) it is fair and just for the original determination to be varied or replaced.¹³

The developer and the purchaser may not be represented by an advocate and solicitor at the proceedings before an Assessor, except with the permission of the Assessor. The developer and the purchaser must each bear their own costs for the proceedings before an Assessor.

Conclusion

In conclusion, the operation of Part 8C seeks to provide relief to developers who are unable to meet the contractual delivery date in the SPA due to the COVID-19 pandemic subject to reimbursement of qualifying costs to purchasers for such out-of-pocket expenses that purchasers would not have incurred but for the delayed delivery of vacant possession of their units. Regardless, the Government has encouraged developers who require an extension of the date of delivery of possession to first discuss with their purchasers and come to a workable and mutually agreeable arrangement before tapping on the relief under Part 8C.

¹² Under Part 8C of the Act, a purchaser may also make an application for an Assessor's determination as to the amount the developer is liable to reimburse the purchaser in the prescribed form (accessible [here](#)) and manner and within the prescribed time. Notice of the application must then be served on the developer within the prescribed time.

¹³ Section s 39OA(2) sets out the factors that the Assessor must take into account in considering if it is just and fair for the original determination to be varied or replaced: (a) whether there has been any undue delay in making the application for a subsequent determination; and (b) whether any person has taken any action in reliance of the original determination.

Corporate Real Estate

Visit our [COVID-19 Resource Centre](#) for views from our lawyers across the region on common issues and legal implications brought about by COVID-19. For specific inquiries, please reach out to your relationship partner or send an email to our [COVID-19 Legal Team](#).

Contacts



Elsa Chai
Head, Corporate Real Estate

T +65 6232 0512

elsa.chai@rajahtann.com



Norman Ho
Senior Partner, Corporate Real Estate

T +65 6232 0514

norman.ho@rajahtann.com



Gazalle Mok
Partner, Corporate Real Estate

T +65 6232 0951

gazalle.mok@rajahtann.com



Chou Ching
Partner, Corporate Real Estate

T +65 6232 0693

chou.ching@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

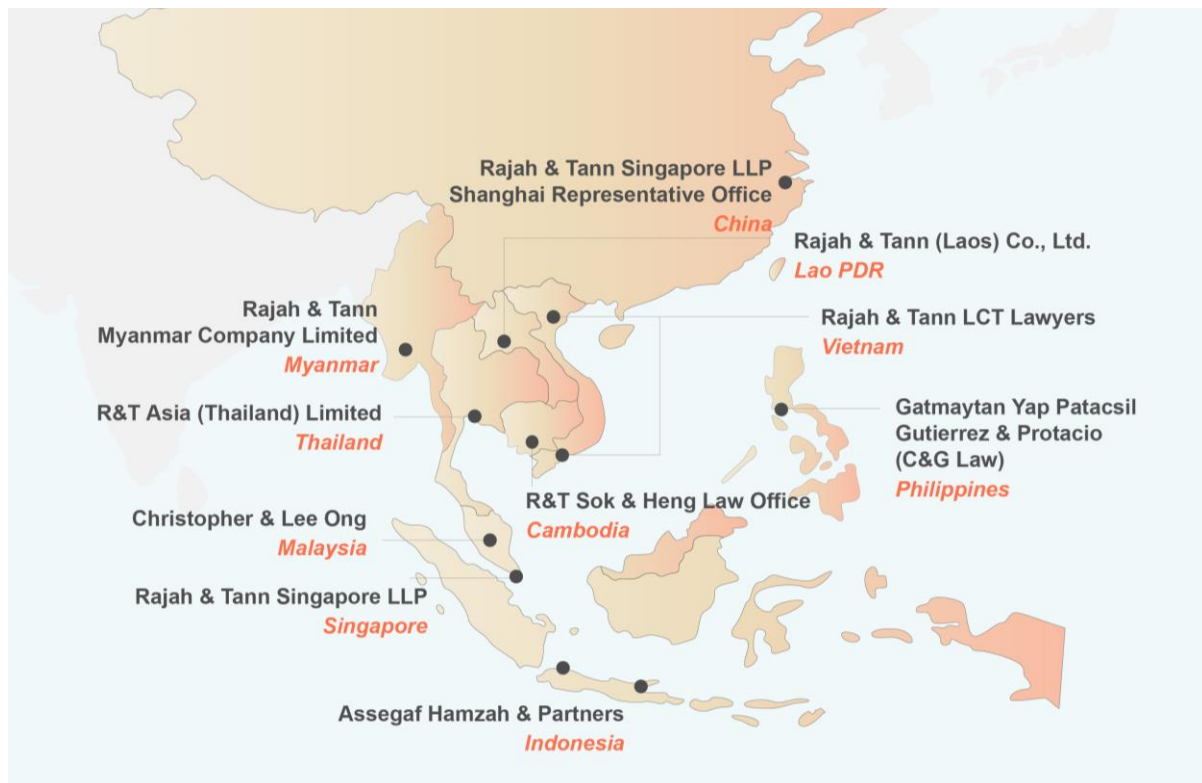
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.