

General – COVID-19

## Extension of Relief Period for Specified Contracts under the COVID-19 (Temporary Measures) Act

### Introduction

The COVID-19 (Temporary Measures) Act ("**Act**") provides temporary relief for parties that are unable to perform their contractual obligations due to the COVID-19 pandemic. Amongst its measures, Part 2 of the Act provides relief from certain legal and enforcement measures for prescribed categories of contracts, and Part 8B provides for cost sharing between parties to qualifying construction contracts for additional costs caused by delays.

As the country moves further along the road to recovery, the relief periods for many of the measures under the Act have come to a close. However, on 26 March 2021, the COVID-19 (Temporary Measures) (Extension of Prescribed Period) Order 2021 ("**Order**") was published in the Government Gazette, extending the relief period for certain measures to **19 April 2021**.

The Ministry of National Development ("**MND**") has stated in a press release of 26 March 2021 (available [here](#)) that the purpose of this extension is to allow Parliament to consider the COVID-19 (Temporary Measures) (Amendment No. 2) Bill 2021 ("**Bill**"), which it intends to introduce on 5 April 2021. The Bill would extend the relief periods under the Act as follows:

- (a) Built environment sector
  - Under Part 2 of the Act, the relief period for construction contracts or supply contracts, or any performance bond granted thereto, would be extended to **30 September 2021**.
  - Under Part 8B of the Act, the relief period would be extended to **30 September 2021**.
- (b) Real estate sector
  - Under part 2 of the Act, the relief period for options to purchase and sale and purchase agreements with developers over housing accommodation or commercial property would be extended to **30 June 2021**.

The relief periods for these categories of contracts were previously set to expire on 31 March 2021, but with this further extension, Parliament will be able to consider the Bill which, if passed, will afford parties to such contracts with a wider window to make the necessary arrangements. In particular, the MND notes that although construction works have restarted, contractors are still faced with persisting challenges. More information and details on the Bill will be shared in an upcoming Client Update in the event that it is passed by Parliament.

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For more information on the operation of Part 2, including criteria for application and the procedure for obtaining relief, our earlier Client Update on "Statutory Moratorium against Breach of Scheduled Contracts Starts 20 April 2020" is available [here](#). For more information on the operation of Part 8B, please see our earlier Client Update on "COVID-19 (Temporary Measures) Act: Re-Align Framework Available from 15 January 2021 and Other Additional Reliefs for Built Environment Sector", which is available [here](#).

In this Update, we provide a reminder of the relief provided for these specified categories of contracts and the practical effect of the further extension.

### Construction Contracts and Supply Contracts (Part 2 of the Act)

Part 2 of the Act applies to, among other categories, construction contracts or supply contracts. An eligible party ("**Party A**") may serve a Notification for Relief upon the other party to the contract ("**Party B**") if:

- (a) The contract was not entered into or renewed (other than automatically) on or after 25 March 2020;
- (b) Party A is unable to perform an obligation under the contract that is due for performance on or after 1 February 2020; and
- (c) The inability is caused to a material extent by a COVID-19 event.

The relief granted under Part 2 for such contracts includes the following:

- (a) Party B cannot commence or continue court, domestic arbitral or insolvency proceedings against Party A for the duration of the relief period.
- (b) Party B cannot call on a performance bond or equivalent granted pursuant to the contract with Party A less than seven days before its date of expiry, for the duration of the relief period.
- (c) The inability to supply goods or materials due to COVID-19 is a defence to a claim for breach of contract, damages or liquidated damages.

The Ministry of Law ("**MinLaw**") has acknowledged that the construction sector in particular faces significant delays due to work stoppages and reduced operating capacity. The extension of the relief period for construction and supply contracts to 19 April 2021 will thus provide more time as Parliament considers the Bill to be proposed by the MND on 5 April 2021.

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## Construction Contracts (Part 8B of the Act)

Part 8B of the Act applies to a construction contract that fits the following criteria:

- (a) The contract was not entered into or renewed (other than automatically) on or after 25 March 2020;
- (b) It remains in force on 2 November 2020;
- (c) The party for whom the construction works are performed under the contract is not an individual (except an individual acting as a sole proprietor of a sole proprietorship); and
- (d) Where, as at 7 April 2020, any construction works to be performed under the contract have not been certified as completed in accordance with the contract.

Part 8B directs contracting parties to a Part 8B contract to co-share the additional costs incurred by the contractor between 7 April 2020 to 31 March 2021 which arise from delays in a project which are to a material extent caused by COVID-19 ("**qualifying costs**"). Part 8B sets out a list of qualifying costs and further clarifies what types of costs are excluded as qualifying costs.

Affected contractors are entitled to submit their claim for qualifying costs incurred in the period from 7 April 2020 until 31 March 2021 through progress payment claims. The co-sharing percentage between the parties is 50% of the qualifying costs, subject to a monthly cap of 0.2% of the contract sum and an overall cap of 1.8% of the contract sum.

Where the construction contract is one to which the Building and Construction Industry Security of Payment Act ("**SOPA**") applies, the party required to perform the construction works must claim for the qualifying costs by including the amount in a payment claim that the party serves on the party for whom the construction works are performed, in accordance with the SOPA.

## Options to Purchase and Sale and Purchase Agreements (Part 2 of the Act)

Part 2 of the Act also applies to an option given by a developer to an intending purchaser for the purchase of housing accommodation or commercial property, as well as an agreement between a developer and a purchaser for the sale and purchase of housing accommodation or commercial property. Similarly, Party A may serve a Notification for Relief upon Party B if:

- (a) The contract was not entered into or renewed (other than automatically) on or after 25 March 2020.
- (b) Party A is unable to perform an obligation under the contract that is due for performance on or after 1 February 2020.
- (c) The inability is caused to a material extent by a COVID-19 event.

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The relief granted under Part 2 for such contracts includes the following:

- (a) For an option to purchase, the developer may not withhold or forfeit any part of the booking fee (or other consideration paid for the option to purchase) for the duration of the relief period.
- (b) For a sale and purchase agreement, the developer cannot terminate the agreement during the relief period.
- (c) The late payment interest and charges for arrears accrued between 1 February 2020 and the end of the relief period under a sale and purchase agreement will be capped at an amount equal to 5% per annum of simple interest on the arrears.

MinLaw has stated that the extension gives more time to purchasers of residential, commercial and industrial properties to make the relevant payments to the developers, with minimal impact on the developers' cash flow. Purchasers and developers may utilise the extended period until 19 April 2021 to seek temporary relief for inability to perform their contractual obligations under options to purchase and sale and purchase agreements as Parliament considers the Bill to be proposed by the MND on 5 April 2021.

## Concluding Words

The extension of the various relief periods reflects the responsive nature of the COVID-19 relief measures. The differing lengths of extension also indicate the industry-specific nature of the relief measures. As the pandemic affects different industries to different extents, the relief periods have accordingly been tailored to manage the corresponding needs.

We will continue to monitor the progress of the proposed Bill and keep you updated on any relevant extensions to the relief periods under the Act.

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](#).

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