

Dispute Resolution

Statutory Moratorium Against Breach of Scheduled Contracts Starts 20 April 2020

COVID-19 (Temporary Measures) Act 2020

The COVID-19 (Temporary Measures) Act 2020 ("**Act**") was passed in Parliament on 7 April 2020 and has come into force in phases. On 20 April 2020, the provisions in the Act dealing with the following temporary measures came into force:

- Temporary relief for inability to perform a scheduled contract specified in the Act that is to a material extent caused by a COVID-19 event; and
- Temporary relief for financially distressed individuals and businesses by increasing the debt thresholds for bankruptcy and insolvency.

The Regulations setting out the details for a party to seek the temporary reliefs under the Act were also issued and came into force on 20 April 2020.

This Update provides a summary of the requirements and process for seeking these temporary reliefs under the Act and includes an overview guide of the procedure diagrammed for your ease of reference.

Temporary Relief for Inability to Perform Scheduled Contracts

Part 2 of the Act provides for targeted and temporary relief for parties that, due to the ongoing COVID-19 pandemic, find themselves unable to perform obligations under certain scheduled contracts – including contracts to which the government is a party.

Key conditions to qualify for temporary relief

To qualify for temporary relief under the Act, a party to a contract ("**Qualifying Debtor**") must fulfil the following key conditions:

- **Types of contracts:** The contract must be a scheduled contract as defined in the Act. Broadly, it covers five categories of contracts, namely: (1) leases and licenses of non-residential property; (2) construction related contracts; (3) event or tourism related contracts; (4) hire purchase or conditional sales agreements; and (5) certain secured loan facilities for local enterprises (being at least 30% owned by Singaporean citizens and/or PRs with turnover of the group to which they belong not exceeding S\$100 million in the last financial year). The list of scheduled contracts can be varied by the Minister. For the detailed list, please refer to the [Schedule to the Act](#) or a [summary of the](#)

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[scheduled contracts](http://www.mlaw.gov.sg/covid19-relief) provided on the Ministry of Law ("MinLaw") website at www.mlaw.gov.sg/covid19-relief;

- **Timing of contracts:** The contract must not be entered into or renewed (other than automatically) on or after 25 March 2020;
- **Time of performance of contracts:** The party is unable to perform an obligation in the contract that is due for performance on or after 1 February 2020; and
- **Reason for inability to perform a contract:** The inability to perform the contract must be to a material extent caused by a COVID-19 event. A COVID-19 event refers to the COVID-19 epidemic or pandemic or the operation of Singapore or foreign laws or any governments' orders or directions that are made in response to COVID-19.

Six-month moratorium

The Act prohibits creditors from taking certain legal actions against a Qualifying Debtor for six months, from 20 April 2020 to 19 October 2020, in the first instance. The period of relief may be extended to up to a year.

Briefly, the six-month moratorium aims to protect the Qualifying Debtor from:

- Court, domestic arbitration (but not international arbitration), and insolvency proceedings, as well as execution proceedings against the debtor's property;
- Enforcement of security against immovable property or movable property used for business purposes;
- Appointment of a receiver and manager over the debtor's property;
- Call on a performance bond given for a construction or supply contract;
- Termination of a lease or license over immovable property due to non-payment of rent;
- Exercise of any right of re-entry or forfeiture under a lease or license over immovable property.

In addition, any guarantor or surety of the Qualifying Debtor will enjoy the same protection.

For more details of the scope of the six-month moratorium, please refer to our earlier Update titled "[Temporary Relief for Breach of Contract under the New COVID-19 Bill](#)".

Seeking relief under the Act

A Qualifying Debtor who intends to seek relief under the Act must serve a Notification for Relief in the prescribed form ([Form 1](#)) available on the MinLaw website at www.mlaw.gov.sg/covid19-relief ("**Notification**"). The Notification should be served on the following parties (if applicable) ("**Relevant Parties**");

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- The other party or parties to the contract by 19 October 2020;
- Any guarantor or surety for the obligation in the contract no later than one working day after the date of service of the Notification on the party to the contract; and
- The issuer of a performance bond or equivalent for the performance of the obligation, where the contract is a construction contract or supply contract ("**Issuer of Related Performance Bond**"), no later than one working day after the date of service of the Notification on the party to the contract.

The modes of service for the Notification are prescribed in the [COVID-19 \(Temporary Measures\) \(Temporary Relief for Inability to Perform Contracts\) Regulations 2020](#), which include serving it to the Relevant Party's:

- Last email address using the electronic system available on the MinLaw website at www.mlaw.gov.sg/covid19-relief; or
- Last postal address by prepaid registered post.

Stay or dismissal of court or arbitral proceedings

After serving the Notification on the Relevant Parties, a Qualifying Debtor should obtain a stay or dismissal of any pending court or arbitral proceedings in respect of the obligations covered under the Notification by filing a Memorandum of Notification for Relief ("**Memorandum**") with the relevant court or arbitral tribunal. The Memorandum may be filed in respect of any pending court or arbitral proceedings commenced before or after the service of the Notification.

The prescribed form for the Memorandum (Form 2) is available on the MinLaw website at www.mlaw.gov.sg/covid19-relief.

Information on the proceedings for filing the Memorandum with the relevant courts is set out in the webpages below:

- For proceedings before the High Court: "[Information on Filing a Memorandum of Notification for Relief or Other Prescribed Forms under the COVID-19 \(Temporary Measures\) \(Temporary Relief for Inability to Perform Contracts\) Regulations 2020](#)" at the Supreme Court website.
- For proceedings before a District Court, Magistrate's Court or the Small Claims Tribunals: "[COVID-19 Advisory: Notification of Relief under the COVID-19 \(Temporary Measures\) \(Temporary Relief for Inability to Perform Contracts\) Regulations 2020 and Ongoing State Courts Proceedings](#)" at the State Courts website.

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Application for Assessor's determination

If a Qualifying Debtor is not able to come to an agreement with the other party or parties to the contract for a compromise in relation to the Debtor's obligations covered under the Notification, the Qualifying Debtor may apply for an Assessor's determination of the issues involved.

The Assessor's determination process is intended to be a quick summary procedure. Parties will not be permitted representation by lawyers and no costs orders will be made. The Assessor's decisions are intended to be final and cannot be appealed. However, a party who was absent from the hearing by the Assessor may apply to set aside the Assessor's determination, if the party had a good reason for being absent.

The details and process for applying for an Assessor's determination under the Act, the hearing and determination process by the Assessor are set out in the [COVID-19 \(Temporary Measures\) \(Temporary Relief for Inability to Perform Contracts\) Regulations 2020](#) and at www.mlaw.gov.sg/covid19-relief (Application for an Assessor's Determination). The key steps in the process are set out below:

- **Submit Application for an Assessor's Determination to Registrar:** After serving or being served the Notification, any party to a contract that is covered by the Notification may submit an Application for Determination by Assessor (Form 6) ("**Application**") to the Registrar of Assessors ("**Registrar**") using the electronic system available on the MinLaw website at www.mlaw.gov.sg/covid19-relief.
- **Review of Application by Registrar:** The Registrar will ascertain if the Application is in order.
- **Registrar sends Documents to Applicant:** If the Registrar is satisfied that the Application is in order, the following documents will be sent to the Applicant (collectively "**Documents**"):
 - Acknowledgement of receipt of the Application;
 - Response form that the other party/parties to the contract who has served and been served the Notification ("**Respondent**") must submit to the Registrar.
- **Applicant serves Documents on Respondent and other parties:** Within two working days after receiving the Documents from the Registrar, the Applicant must serve a copy of the Application and Documents on the Respondent, every other party to the contract, any guarantor or surety for the obligation in the contract and the Issuer of Related Performance Bond.
- **Applicant submits Declaration of Service:** Within one working day after serving the Application and Documents on the relevant parties, the Applicant must submit a Declaration of Service to the Registrar.
- **Respondent submits response to Registrar and serves response on relevant parties:** Within five working days after being served with the Application and Documents, the Respondent must submit a Response to the Registrar and serve the Response on the Applicant, the guarantor

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or surety for the obligation in the contract and the Issuer of Related Performance Bond.

- **Registrar sets appointment for hearing:** If the Registrar is satisfied that the steps above have been duly completed, the Registrar will notify the Applicant and Respondent by email of:
 - the appointment of an Assessor;
 - the date and place for the hearing (if applicable).
- **Assessor conducts hearing and makes determination:** Generally, the Assessor may conduct the hearing by way of exchange of emails unless he/she is of the view that the interests of justice would be better served by an online or physical hearing.
- **Registrar informs Applicant and Respondent of Assessor's determination:** After the Assessor has made a determination, the Registrar will inform the Applicant, the Respondent, and all other parties who were served the Application of the determination.

The [COVID-19 \(Temporary Measures\) \(Temporary Relief for Inability to Perform Contracts\) Regulations 2020](#) and the MinLaw website at www.mlaw.gov.sg/covid19-relief also provide for the processes for applying for:

- an extension of time for an action item required of the Applicant or Respondent;
- an amendment of the Application;
- a withdrawal of the Notification or Application;
- a request to correct error in the Assessor's determination; or
- an application to set aside a dismissal or determination made by an Assessor (for a party who was absent from the hearing with a good reason).

Providing update to court or arbitral tribunal on Assessor's determination or status of Application

If a Qualifying Debtor has previously filed the Memorandum of Notification for Relief with the relevant court or arbitral tribunal, the Applicant is required to update the court or tribunal of the Application and any Assessor's determination in relation to that Notification for Relief in a timely manner.

Summary of key process

Please refer to the diagram at the end of this Update for a snapshot of the key milestones/considerations in the process for seeking temporary relief for the inability to perform a scheduled contract under the Act.

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Temporary Relief by Increasing Debt Thresholds for Bankruptcy and Insolvency

The Act temporarily amends the existing bankruptcy and insolvency legislation to:

- Increase the debt thresholds for bankruptcy and insolvency from S\$15,000 to S\$60,000 and S\$10,000 to S\$100,000 respectively; and
- Increase the time period to respond to statutory demands from creditors from 21 days to six months.

For more details on this relief, please refer to our earlier Update titled "[*Temporary Relief for Breach of Contract under the New COVID-19 Bill*](#)".

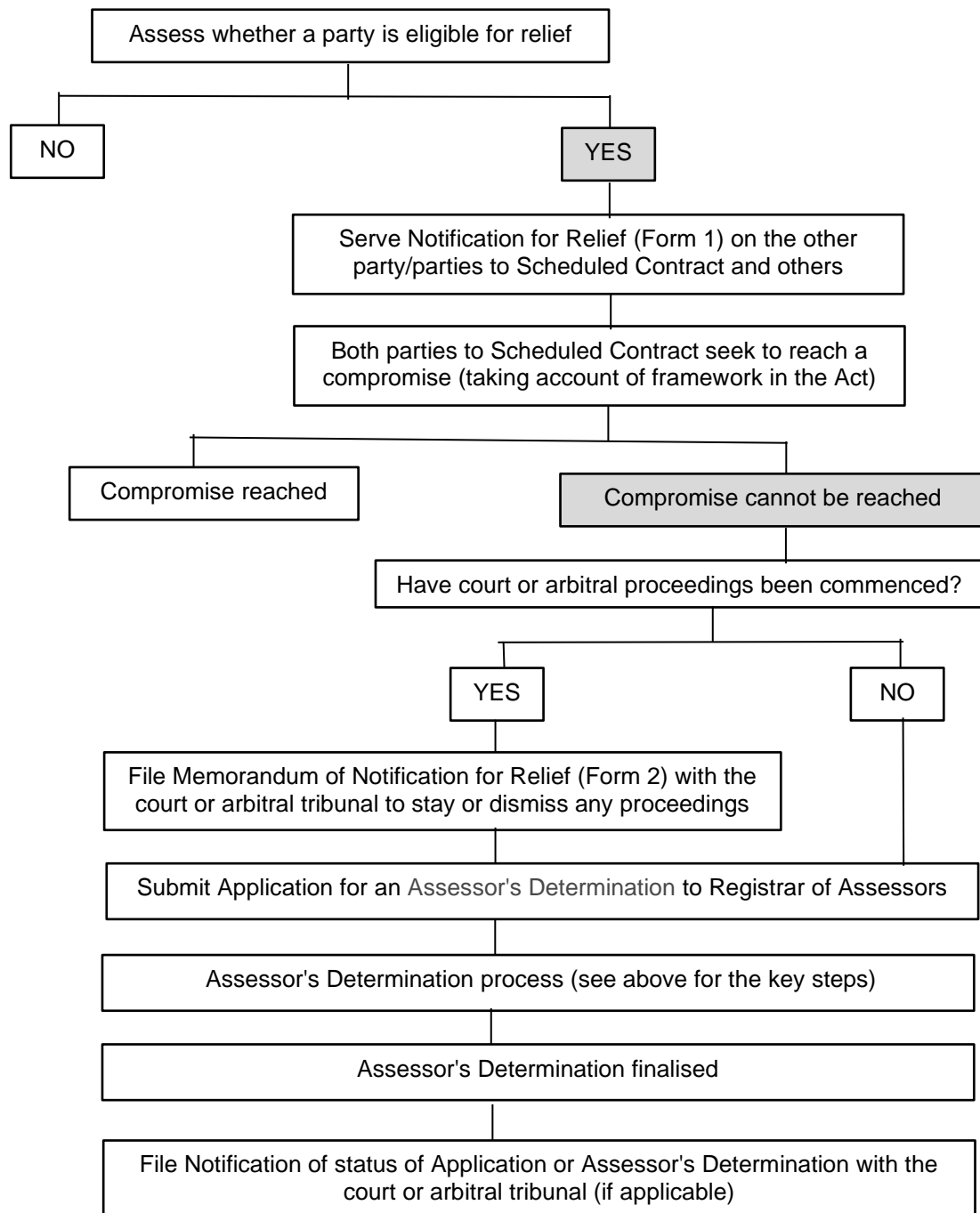
Further Information

For further queries, please feel free to contact our team below.

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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Key Milestones / Considerations: Seeking Relief under the Act for Inability to Perform Scheduled Contracts



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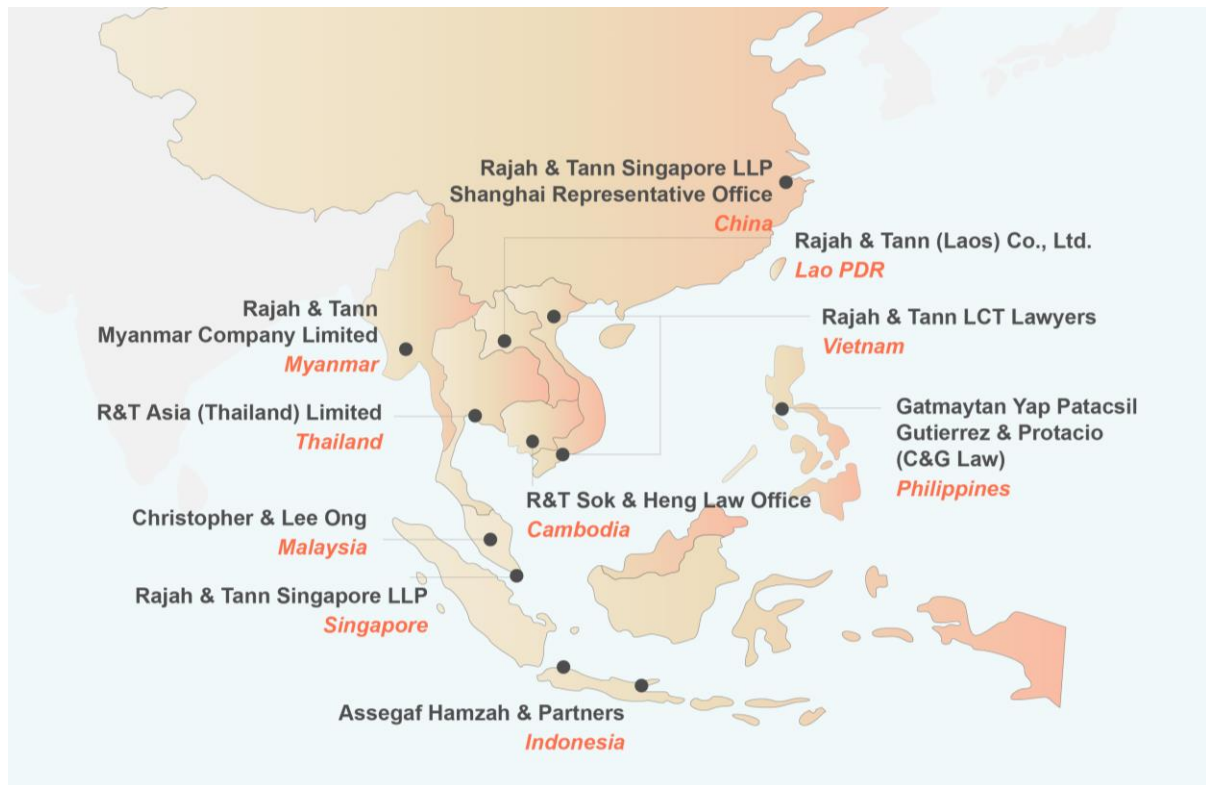
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