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Further Changes to COVID-19 (Temporary Measures) Act Concerning Rental Relief, Collective Sales, Construction Contracts and Meetings

Introduction

The COVID-19 (Temporary Measures) Act ("**Act**") was enacted in April 2020 to introduce a series of legal reliefs and mechanisms for businesses and individuals to aid them in managing the impact of the COVID-19 pandemic.

Since then, the Act has undergone certain amendments to keep pace with the changing circumstances of the pandemic, and to provide necessary clarifications and enhancements. On 4 September 2020, the COVID-19 (Temporary Measures) (Amendment No. 2) Bill ("**Bill**") was passed in Parliament, setting out further proposed amendments. The Bill seeks to strengthen the Act by:

- (a) Expanding the powers of rental relief assessors;
- (b) Allowing applications for the extensions of deadlines for collective sales;
- (c) Clarifying the interaction between Part 8 of the Act (which deals with contracts affected by delay in the performance or breach of a construction contract, supply contract or related contract) and other dispute resolution proceedings; and
- (d) Enhancing the certainty of alternative meeting arrangements.

From the [Second Reading speech](#) on the Bill in Parliament, it is noted that the Bill makes a number of clarificatory and technical amendments to facilitate a better delivery of the reliefs, and does not introduce major changes to the policy framework.

This Update highlights the key features of the Bill and how it may change the operation of the respective mechanisms and provisions in the Act.

Rental Relief Assessors

The current rental relief framework under the Act provides a mechanism for the resolution of certain disputes between landlord and tenant. A landlord may apply to an independent rental relief assessor to determine the tenant's eligibility for rental waivers or the landlord's eligibility to provide a reduced amount of rental waiver on the basis of financial hardship. We have previously issued an Update titled "Temporary Relief Measures for Tenants and Landlords, Purchasers and Developers in COVID-19

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(Temporary Measures) Amendment Act 2020" covering this topic and other relief measures relating to landlords and tenants in greater detail, available [here](#).

The amendments in the Bill will expand the powers of rental relief assessors. Apart from the existing powers to make determinations upon application from landlords, the new provisions allow assessors to make determinations upon application from *either* landlord *or* tenant on unresolved disputes relating to:

- (a) The actual amount of rent under the lease agreement; and
- (b) The actual amount of any component of the formula used to compute the prescribed amount of rent to be waived.

It is noted from the Second Reading in Parliament that the Bill will empower the assessors:

- (a) to determine the amount of rent to be waived pursuant to lease agreements. This can address instances where maintenance or service charges are not broken down under the lease agreement. The amendments in the Bill seek to empower the assessors to make a determination as to which portion ought to be waived; and
- (b) with the jurisdiction to address holistically disputes in relation to the series of formulae which apply to the different scenarios for rental waivers to take place, for example, depending sometimes on when the tenant has moved in or moved out, or whether or not the business is of one nature or another, depending on the criteria.

However, an application for determination under the new provisions will not be allowed where:

- (a) Proceedings before a court or arbitral tribunal have already commenced in relation to the matter in question; or
- (b) A court judgment, arbitral award or compromise or settlement has been made in relation to the matter in question.

Collective Sales

The Land Titles Strata Act sets out certain deadlines for the conduct of collective sales. However, feedback from some Collective Sale Committees ("**CSC**") has indicated that they have faced difficulties in keeping to the deadlines as the completion of the sales process may be materially impacted by COVID-19 measures such as travel restrictions and circuit-breaker measures.

The Bill introduces a new Part 9 which empowers the Minister for Law ("**Minister**") to extend collective sale deadlines on a case-by-case basis by way of a Ministerial Order. This is provided that:

- (a) A CSC was constituted before 25 March 2020; and

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- (b) A requirement specified in the Land Titles Strata Act was not satisfied or is unlikely to be satisfied because it was or will be inexpedient or impracticable to carry out any act necessary for the requirement to be satisfied in view of a COVID-19 event.

The process and procedure for such applications will be set out in subsidiary legislation.

Construction and Supply Contracts

When it is in force, Part 8 of the Act will provide a mechanism for parties to specified types of contracts to obtain relief if they are affected by breaches or delays in construction, supply or related contracts, if the breach or delay is caused to a material extent by a COVID-19 event. Parties may apply for an assessor to determine:

- (a) Whether Part 8 applies in the case;
- (b) Whether it is just and equitable for the prescribed obligation or right to be performed or exercised in a manner other than according to the terms of the contract; or
- (c) Whether it is just and equitable for any prescribed term in the contract to be varied, released or discharged.

Part 8 of the Act is set out in an earlier set of amendments to the Act and is not yet in force.

The amendments in the Bill clarify how the mechanism in Part 8 will operate alongside other dispute resolution mechanisms so as to ensure that they interact smoothly when Part 8 is brought into force. This includes:

- (a) **Effect of prior proceedings:** If court, arbitral or Building and Construction Industry Security of Payment Act ("**SOPA**") proceedings have already been commenced, there cannot be an application for relief under Part 8 in relation to the subject of the existing proceedings.
- (b) **Part 8 moratorium:** Conversely, once an application for relief is filed under Part 8, a moratorium is imposed which prevents the other party from taking any action described in the provision, which will last until the application has been rejected or withdrawn, or a determination has been issued. The moratorium covers court, arbitral or SOPA proceedings for the same matter, the enforcement of security, and insolvency applications (such as judicial management, winding-up, bankruptcy and receivership).
- (c) **Effect of Part 8 determination:** Where a determination under the Act has adjusted the terms of the contract, any subsequent SOPA determination must be based on the adjusted contract terms.
- (d) **SOPA adjudicator's scope of powers:** Where a SOPA adjudication application has already been made prior to the other party making an application under Part 8, the SOPA adjudicator will be empowered to account for the effects of COVID-19 by giving similar relief as an assessor

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may provide under Part 8. This is provided that the contract has not previously gone through the Part 8 process.

Alternative Meeting Arrangements

Part 4 of the Act empowers the Minister to prescribe, by order, alternative virtual arrangements for meetings otherwise requiring personal attendance. However, such orders must be made in view of an existing control measure.

The Minister has made a number of Meeting Orders enabling meetings to be convened, held and conducted by electronic means, or deferred if necessary (though these orders are set to expire on 30 September 2020). We have previously issued a Client Update on this topic titled "Conducting Meetings by Electronic Means Amid COVID-19" [here](#) (and updated [here](#)). We have also issued a Client Update titled "Conducting Meeting by Electronic Means for Corporate Insolvency and Personal Bankruptcy Matters" [here](#).

The Ministry of Law has stated in a [press release](#) that it intends to extend the duration of the Meeting Orders allowing for virtual meetings to 30 June 2021. This will provide organisations with greater certainty over the conduct of their meetings, which must sometimes be planned months in advance.

The Bill thus introduces amendments allowing the Minister to prescribe alternative meeting arrangements if necessary or expedient to prevent the spread of COVID-19, regardless of whether there is an existing control measure. This allows the Minister's order to remain in force (and for the option of holding a virtual meeting to continue) even if the relevant safe distancing regulations change or cease.

The existing Meetings Orders allow for meetings to be deferred to a date no later than 30 September 2020 for certain organisations. The Ministry of Law has stated that this deferment will be extended to 31 December 2020 for the following categories of meetings:

- (a) General and board meetings of charities;
- (b) General meetings of co-operative societies;
- (c) General meetings of mutual benefit organisations;
- (d) General and board meetings of registered societies;
- (e) General meetings of management corporations and subsidiary management corporations; and
- (f) Meetings of trade unions and their executives and branches.

However, this extension will not apply to the existing deferment provisions over bankruptcy and insolvency-related meetings, meetings of Town Councils, and meetings of school management committees and school governing boards.

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Concluding Words

In light of the fluid nature of the COVID-19 situation, the relief measures and mechanisms under Singapore's COVID-19 legislation continue to be in a state of development. The amendments in the Bill introduce welcome enhancements to the COVID-19 framework, while also providing helpful clarifications to the existing provisions.

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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