

# New Bill Passed Broadens Application of COVID-19 (Temporary Measures) Act 2020 to Parties Affected by Stoppage of Construction Works

Parties to construction and supply-related contracts are set to benefit from the enhanced measures under the COVID-19 (Temporary Measures) (Amendment) Bill that was passed in the Parliament on 5 June 2020 (“**Bill**”).<sup>1</sup>

In relation to the construction industry, the Bill will enhance the COVID-19 (Temporary Measures) Act 2020 (“**Act**”)<sup>2</sup> to provide relief for a contract affected by delay in the performance or breach of a construction (or supply) contract due to a COVID-19 event in the following aspects.

## No Forfeiture of Consideration Paid For a Right

A new Section 5A has been introduced to provide a moratorium on certain actions when a party to a prescribed scheduled contract is or will be unable to exercise a right under that contract and the inability is to a material extent caused by a COVID-19 event.<sup>3</sup>

After the party has served a notification for relief on the other party to the contract and other prescribed persons, the other party to the contract **may not forfeit any part of the consideration paid for the right or carry out other actions which may be prescribed**, until the earliest of the expiry of the prescribed period, the withdrawal of the notification for relief, or a determination by an assessor that the case is ineligible for the moratorium. The prescribed period presently refers to the six-month period from 20 April 2020 to 19 October 2020, but it may be extended or shortened by the Minister for Law.

The Minister for Law may, by way of regulations, exclude certain scheduled contracts (or any part thereof) from the application of any of those actions, or apply any of those actions to such contracts (or any part thereof) with modifications.

## Powers of Assessors to Make Subsequent Determinations

Under the new Section 13A introduced by the Bill, after an assessor has made a determination or further determination under Section 13 of the Act, the assessor or another assessor may, either on his or her own motion or on the application of one or both of the parties to the assessor’s determination:

- (a) vary or replace the determination if there has been a material change in the circumstances after the determination was made and it is just and equitable for the variation or replacement to be made;

<sup>1</sup> Singapore Statutes Online, *COVID-19 (Temporary Measures) (Amendment) Bill*, <https://sso.agc.gov.sg/Bills-Supp/28-2020/Published/20200605?DocDate=20200605> (“**Bill**”) (accessed 9 June 2020).

<sup>2</sup> Singapore Statutes Online, *COVID-19 (Temporary Measures) Act 2020*, <https://sso.agc.gov.sg/Act/COVID19TMA2020>, (accessed 9 June 2020).

<sup>3</sup> Cl 5 of the Bill.

- (b) where a party is required by the determination to make any payment, grant that party an extension of time to make the payment; or
- (c) require the parties to attend before the assessor after a specified time for a further review of the matter and to make any further determination as is appropriate.

### Confidentiality of Proceedings

A new section 15A introduced by the Bill imposes a duty of confidentiality on a party to a proceeding before an assessor as regards statements and documents submitted, created or made for those proceedings and information disclosed during the proceedings.<sup>4</sup>

Breach of such duty is a criminal offence and a party injured by the breach may take civil action against the person in breach.

### Representation by Lawyer

A party to a proceeding before an assessor may be represented by an advocate and solicitor, if permitted by the assessor.<sup>5</sup>

### Construction and Supply-Related Contracts Can Now Seek Relief

Of significance, parties to construction and supply-related contracts who were previously unable to seek relief under the Act due to the **nature of their contracts not falling within the definitions of “construction contract”<sup>6</sup> or “supply contract”<sup>7</sup>**, may now seek relief for breach and/or delays under the Act.<sup>8</sup>

The terms “construction contract” and “supply contract” have the same meanings given under Section 2 of the Building and Construction Industry Security of Payment Act.

For illustrative purposes, take for example, a hypothetical scenario concerning two parties to a construction-related (or supply-related) contract, where Party A is unable to perform an obligation caused by stoppage in construction works and is seeking relief under the Act and the other contracting party is Party B.

#### *Example 1*

Party A, a developer, entered into a contract with Party B to fit-out an office. However, due to the stoppage of works arising from authorities’ directives on or after 1 February 2020 and before the expiry of the prescribed period, Party A is unable to fulfill its obligations to complete the works within the timeline stipulated in the contract.

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<sup>4</sup> Cl 13 of the Bill.

<sup>5</sup> Cl 12 of the Bill.

<sup>6</sup> Section 2 of the Act.

<sup>7</sup> Section 2 of the Act.

<sup>8</sup> Cl 16 of the Bill.

Party A may seek relief against the imposition of liquidated damages for the period of delay under the Act.

### *Example 2*

Party A, a tenant, entered into a tenancy agreement with Party B, the landlord, which provides a three-month rent-free period for the purposes of renovation. However, due to COVID-19 restrictions, Party A is unable to proceed with these renovation works and is effectively losing the benefit of the rent-free period.

Party A may seek relief to enjoy the benefit of the three-month rent-free period under the Act.

### *Example 3*

Party A rents scaffolding materials from Party B until mid-April 2020. However, due to stoppage of works arising from authorities' directives on 7 April 2020, Party A is unable to enter the project site to return the scaffolding materials to Party B.

Party B may not charge Party A for an extra month(s) of rental of these materials.

In the three examples highlighted above, Party A and Party B are not parties to a construction (or supply) contract but are nonetheless affected by stoppage in construction works. These parties can now apply to an assessor for determination to adjust the manner in which they are to perform their contract other than in accordance with the terms of the contract. The assessor may also make a determination for any prescribed term in the contract to be varied, released or discharged.<sup>9</sup>

## **Concluding Remarks**

Since the circuit breaker period began on 7 April 2020, most construction works have been suspended. The stoppage of construction works caused by the COVID-19 pandemic has and will continue to have profound repercussions on construction-related industries even as works are being resumed in a controlled manner after 1 June 2020.<sup>10</sup>

Parties who were previously unable to seek relief under the Act due to the nature of their contracts not falling within the definitions of "construction contract" or "supply contract", may now seek relief for breach and/or delays under the enhanced measures of the Act.

Nevertheless, it is important for parties to these construction and supply-related contracts to understand how their risks of delays and suspension are being impacted by the stoppage of construction works before serving a notification of relief under the Act.

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<sup>9</sup> Cl 16 of the Bill.

<sup>10</sup> Building and Construction Industry (BCA) website, *Gradual Resumption of Construction Work from 2 June 2020*, <https://www1.bca.gov.sg/about-us/news-and-publications/media-releases/2020/05/15/gradual-resumption-of-construction-work-from-2-june-2020#:~:text=The%20Building%20and%20Construction%20Authority,19%20outbreaks%20among%20construction%20workers.> (accessed 8 June 2020).

In this regard, readers may also refer to our earlier updates concerning the [impact of the Act on the construction industry](#) and [how contractors can seek relief under the Act](#).

This update is accurate as of 11 June 2020.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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