

Overview of Relief Measures Under the COVID-19 (Temporary Measures) Act 2020

19 August 2020

Ministry of Law

(A) Background

Background

- **COVID-19:**
 - Unforeseeable and severe impact
 - Makes performance of certain contracts nearly impossible through no fault of parties

- **Equity and justice:**

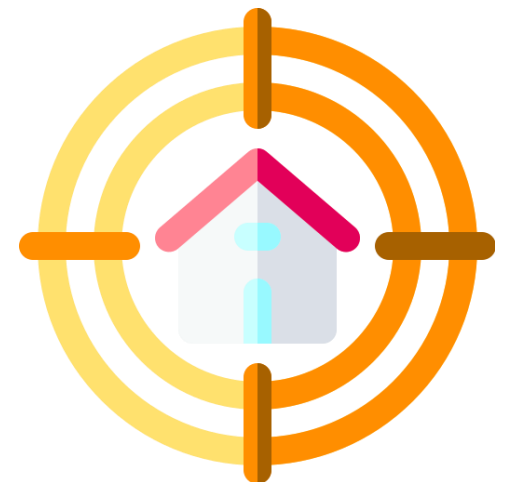
“You’re looking at economic devastation. Businesses destroyed, people’s lives ruined, and in such a situation, you don’t talk contract. **You talk equity, you talk justice, you talk about what is the right thing to do.**”



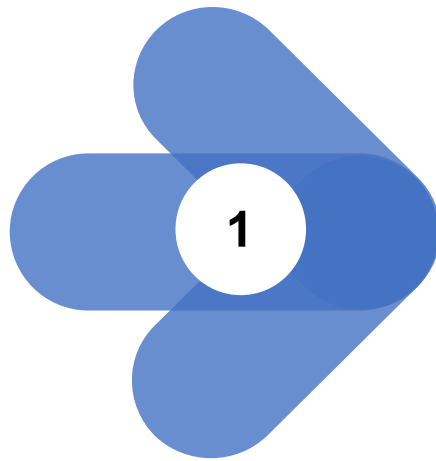
- Minister for Law, Interview with CNBC, 7 April 2020

COVID-19 (TM) Act: Objectives

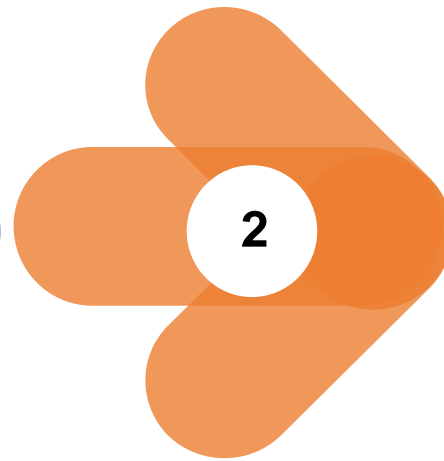
- Targeted protection
- Temporary relief – 6 months in the first instance, and up to 1 year from commencement of the Act



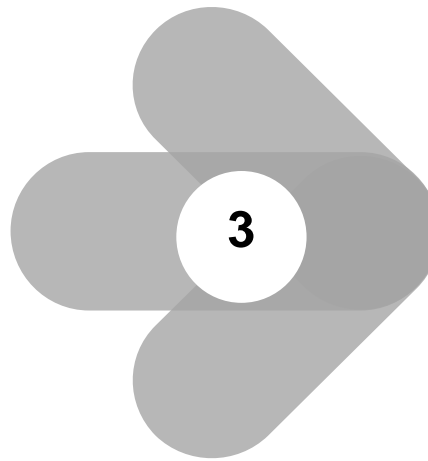
(B) Relief Mechanism



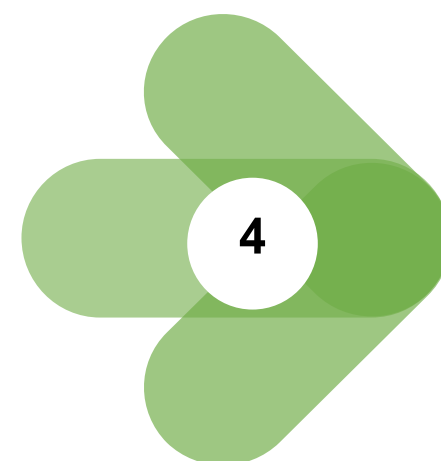
If the contract is covered by the Act, then relief is available



The party seeking relief will serve a *Notification For Relief* on the other party (or parties) to the contract



Upon receiving a Notification For Relief, the reliefs under the Act will apply



Disputes are to be determined by Assessors

(1) Contract covered by the Act

Requirements

- Contract is a *construction or supply contract* within the meaning of the Building and Construction Industry Security of Payment Act (“SOPA”)
- Contract entered into *before 25 March 2020*
- Contractual obligation is to be performed *on or after 1 February 2020*
- Contractual obligation could not be performed *due to COVID-19* (referred to as the “subject inability”)

(2) Notification For Relief

- Reliefs under the Act do not take effect automatically
- Party must first serve a Notification for Relief on the other party
 - Easily done through MinLaw's online form
(see www.mlaw.gov.sg/covid19-relief/notification-for-relief)
- Once the Notification for Relief has been served on the other party to the contract, the reliefs under the Act will apply



(3) Reliefs available under the Act for construction or supply contracts

Temporary moratorium

- Temporary moratorium against certain legal actions, including:
 - Commencement or continuation of an action in a court against defaulting party
 - Making of an application for the winding up of defaulting party
- Note that parties may still commence or continue adjudication proceedings under SOPA

(3) Reliefs available under the Act for construction or supply contracts

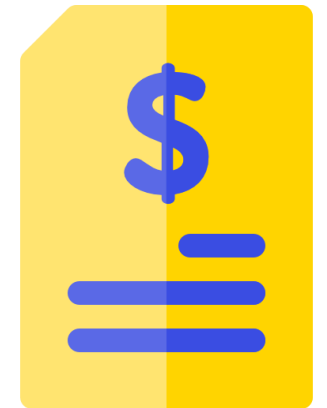
Performance bond

- Calling on a performance bond (or equivalent) earlier than 7 days before date of expiry is not allowed
- Defaulting party can extend the term of performance bond to 26 October 2020 (7 days after the end of the prescribed period), or such other date as may be agreed among the parties

(3) Reliefs available under the Act for construction or supply contracts

Delay damages

- For the purposes of determining the period of delay in performance when calculating the liquidated damages payable (or assessing other damages), the period where the subject inability subsists between 1 February to 19 October 2020 (both dates inclusive) is disregarded



(3) Reliefs available under the Act for construction or supply contracts

Defence to a claim for a breach of contract

- Where a party is unable to supply goods or services as contractually required due to COVID-19 between 1 February to 19 October 2020 (both dates inclusive), the fact that such inability was due to COVID-19 is a defence to a claim for a breach of contract in respect of that inability
- This does not affect any judgment, arbitral award, adjudication determination, compromise or settlement made before the service of the notification for relief

(4) Assessor's determination

- For construction or supply contracts, Assessors will only determine:
 - Whether the party to the construction or supply contract is unable to perform an obligation
 - Whether the inability is to a material extent caused by COVID-19
- Assessors will *not* determine other disputes between the parties, e.g.:
 - Amount of delay damages payable
 - Extent of delay attributable to COVID-19
 - Whether the defence under section 6(6) is made out

THANK YOU.