

SUMMARISING THE COVID-19 (TEMPORARY MEASURES) ACT 2020 FOR THE CONSTRUCTION INDUSTRY

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I. Introduction

1 On 7 April 2020, Parliament passed the wide-ranging COVID-19 (Temporary Measures) Act 2020 (the “Act”) to provide temporary, targeted relief to alleviate the immense pressures caused to individuals, firms and businesses as a result of the COVID-19 pandemic.¹

2 While the reliefs provided are wide-ranging and cover both individuals and industries, this article focuses on how the Act affects the construction industry and provides an overview of the procedure for applications for temporary relief and an assessor’s determination.

1 The COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) can be found at <<https://sso.agc.gov.sg/Act/COVID19TMA2020>> (accessed 29 May 2020).

- 3 In summary, this article covers the following areas:
- (a) application to the construction industry and commencement of temporary reliefs;
 - (b) period of temporary relief;
 - (c) types of temporary reliefs provided;
 - (d) no temporary relief from adjudication proceedings;
 - (e) qualifying for temporary reliefs and its procedures;
 - (f) effects of temporary reliefs;
 - (g) additional reliefs for the construction industry:
 - (i) limitation in calling performance bonds;
 - (ii) extension of performance bonds;
 - (iii) defences to liquidated damages or other damages and other defences;
 - (h) consequences of contravening a valid relief notification;
 - (i) contesting the relief notification; and
 - (j) procedures to apply for an assessor's determination.

4 This article also touches on the recent amendments to the Act in the COVID-19 (Temporary Measures) (Amendment) Bill (the "Amendment Bill") where they apply to the construction industry. Among other changes, the Amendment Bill expands the coverage of applicable temporary reliefs.² However, as of the date of this article, the changes passed in the Amendment Bill are not yet in effect.

2 The COVID-19 (Temporary Measures) (Amendment) Bill was passed on 5 June 2020. See <[http://www.parliament.gov.sg/docs/default-source/default-document-library/covid-19-\(temporary-measures\)-\(amendment\)-bill-28-2020.pdf?sfvrsn=0](http://www.parliament.gov.sg/docs/default-source/default-document-library/covid-19-(temporary-measures)-(amendment)-bill-28-2020.pdf?sfvrsn=0)> (accessed 15 June 2020).

II. Application to construction industry and commencement of temporary reliefs

5 The temporary reliefs (set out in Part 2 of the Act) will apply to construction and supply contracts in the construction industry,³ so long as these contracts are entered into before 25 March 2020.⁴

6 For brevity, all construction and supply contracts as defined under s 2 of the Building and Construction Industry Security of Payment Act⁵ (the “SOP Act”) will be referred to as “construction contracts” in this article.

7 Starting from 20 April 2020, any party seeking temporary relief under the Act can do so,⁶ as long as that party complies with the statutory and regulatory requirements.

8 The applicable regulations are set out in the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020⁷ (“Regulations”).

III. Period of temporary relief

9 The period of temporary relief for the construction industry (the “Temporary Relief Period”) is presently set to last for six months, starting from 20 April 2020.⁸

3 As defined in s 2 of the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed).

4 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) (the “Act”) s 4(1). Exceptions are made for contracts that are renewed automatically on or after 25 March 2020, which will also be covered under the Act.

5 Cap 30B, 2006 Rev Ed.

6 COVID-19 (Temporary Measures) Act 2020 (Commencement) (No 2) Notification 2020.

7 S 303/2020.

8 Section 3 of the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) read with the COVID-19 (Temporary Measures) (Prescribed Period) Order 2020 (S 302/2020).

10 The Minister for Law may extend or reduce the Temporary Relief Period,⁹ although the maximum Temporary Relief Period will be capped at one year from 20 April 2020.¹⁰

IV. Types of temporary reliefs provided

11 Starting from 1 February 2020, where a party (“Party A”) is unable to perform a contractual obligation for another party (“Party B”) due to a COVID-19 event,¹¹ Party A can obtain the following temporary reliefs (amongst others) against Party B:¹²

(a) commencing or continuing court or arbitration proceedings or against Party A (or Party A’s guarantor or surety);¹³

(b) enforcing a court judgment, arbitral award (under the Arbitration Act¹⁴), or an adjudication determination (under the SOP Act) against Party A (or Party A’s guarantor or surety);¹⁵

(c) enforcing any security over immovable property, or movable property used for the purpose of a trade, business or profession;¹⁶

(d) applying for schemes of arrangement, judicial management, winding up or bankruptcy in relation to Party A (or Party A’s guarantor or surety);¹⁷

9 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 3(2).

10 Section 1(2) of the COVID-19 (Temporary Measures) Act 2020 read with the COVID-19 (Temporary Measures) Act 2020 (Commencement) (No 2) Notification 2020.

11 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(1)(a). Take note that s 4 of the COVID-19 (Temporary Measures) (Amendment) Bill (passed 5 June 2020) changes the obligations to include those that *are unable to be performed*, apart from those that cannot be performed.

12 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(3).

13 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) ss 5(3)(a)–5(3)(b).

14 Cap 10, 2002 Rev Ed. The authors note that arbitrations governed by the International Arbitration Act (Cap 143A, 2002 Rev Ed) are excluded under the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020).

15 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(3)(n).

16 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(3)(c).

17 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) ss 5(3)(e)–5(3)(h).

(e) appointing a receiver or manager over any property or undertaking of Party A (or Party A's guarantor or surety);¹⁸ and

(f) commencing or levying of execution, distress or other legal proceedings against the property of Party A (or Party A's guarantor or surety), except with leave of court.¹⁹

(hereinafter referred to as "Temporary Reliefs").

12 Additionally, under the Amendment Bill, Party A may also be able to prevent Party B from forfeiting any consideration paid for a right under the contract. However, it remains to be seen if this particular temporary relief will apply to the construction industry, as the regulations have not provided whether the construction industry is entitled to this particular relief.²⁰

13 The COVID-19 event must be a material cause of Party A's inability to perform the contractual obligation to Party B.²¹ As an example, construction companies could be affected by material causes of inability if they:

(a) supply construction materials from Malaysia and have been severely restricted by Malaysia's movement control order;²²

(b) supply workers but whose workers are faced with a quarantine order;²³ or

(c) have workers who are on stay-home notices for 14 days starting from 20 April 2020.²⁴

18 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(3)(i).

19 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(3)(j).

20 COVID-19 (Temporary Measures) (Amendment) Bill (passed 5 June 2020) cl 5.

21 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(1)(b).

22 Hazlin Hassan, "Malaysia Bans Travel Abroad, Shuts Schools and Businesses over Coronavirus Spread; Lockdown till March 31" *The Strait Times* (16 March 2020).

23 Lester Wong, "Record 120 New Coronavirus Cases in Singapore, 2 Foreign Worker Dormitories Gazetted as Isolation Areas" *The Strait Times* (5 April 2020).

24 Linette Lai, "Coronavirus: Work Permit and S Pass Holders in Construction Sector Will Serve 14-Day Stay-Home Notice from Monday" (18 April 2020).

14 Additionally, any Temporary Relief will not affect court or arbitration proceedings unrelated to the COVID-19 event.²⁵ For example, if there are court or arbitration proceedings that concern both a COVID-19 event and non COVID-19 event, the proceedings relating to the non COVID-19 event can continue.²⁶

15 Similarly, enforcement of any security that is not affected by a COVID-19 event can continue.²⁷

16 A COVID-19 event is defined as:²⁸

- (a) the COVID-19 epidemic or pandemic; or
- (b) the operation of or compliance with laws, orders or directions (in Singapore or elsewhere) that have been made in relation to COVID-19.

17 Additionally, the Temporary Reliefs will not affect any other action that the parties can take in relation to the COVID-19 event, including actions under the Frustrated Contracts Act²⁹ or (if applicable) a *force majeure* clause in the contract.³⁰

18 Lastly, under the Amendment Bill, a new Pt 8 has been created. Part 8 allows parties which have contractual obligations not covered by the Act, but are affected by delays to construction work, to apply for an assessor's determination as to:³¹

- (a) whether the contract should be performed in a manner other than in accordance with the contract;
- (b) whether any prescribed term in the contract should be varied, released or discharged.

The assessor must seek to achieve an outcome that is just and equitable in the circumstances of the case. The determination applied for under Pt 8 is non-appealable and binding on all parties.

25 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(5).

26 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(5).

27 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(6).

28 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 2.

29 Cap 115, 2014 Rev Ed.

30 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(13).

31 COVID-19 (Temporary Measures) (Amendment) Bill (passed 5 June 2020) cl 16.

V. No Temporary Relief from adjudication proceedings

19 Notably, adjudications under the SOP Act are not included under the Act and can continue even if Party A seeks Temporary Relief.³²

20 This is notwithstanding the practical difficulties arising from the extended circuit breaker from 7 April 2020 to 1 June 2020.³³

21 However, any enforcement of the adjudication determination may be constrained as such acts are covered under this Act.³⁴

VI. Qualifying for Temporary Reliefs

22 In order to qualify for the Temporary Reliefs set out in para 11 above, Party A must:³⁵

(a) ensure that Party A's inability to perform a contractual obligation is one that starts from 1 February 2020 and is materially due to a COVID-19 event; and

(b) serve notification for temporary relief in accordance with ss 9(1) and 19 of the Act ("Relief Notification") on all the following parties:

(i) the other parties to the contract,³⁶

(ii) any guarantor or surety for Party A's obligation in the contract, within one working day

32 The Singapore Academy of Law announced on 6 April 2020 that services relating to the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) remained unchanged. Parties may continue to file their applications as per the usual operating hours (9am to 4.30pm, Monday to Friday). See <<https://info.sal.org.sg/salcovid-19>> (accessed 29 May 2020).

33 "In Full: PM Lee's Address to Singapore on Extending Circuit Breaker Period to June 1" *The Straits Times* (21 April 2020).

34 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(3)(n).

35 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) ss 5(1)(a)–5(1)(c).

36 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 9(3)(a).

after serving the Relief Notification on the other parties;³⁷ and

(iii) such other person prescribed under the Act (for example, the issuer of a related performance bond³⁸).

23 Once Party B receives Party A's Relief Notification, Party B will not be able to take any action set out in para 11 above (notwithstanding Party B's contractual or legal right to do so). The limitation on Party B will last until:³⁹

- (a) the expiry of the Temporary Relief Period;
- (b) Party A withdraws the Relief Notification; or
- (c) an assessor determines that Party A's application for Temporary Relief was not one to which the Act applied.

VII. Procedure for obtaining Temporary Relief

24 Most of the steps required under the Act will be done by an online electronic system,⁴⁰ including the assessment proceedings under the Act.⁴¹ Accordingly, Party A will have to use the electronic system in order to submit the Relief Notification.

37 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 9(3)(b).

38 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 9(2). When service on a related performance bond issuer is required, this shall also be done no later than one working day after the date of service of the Relief Notification on the other parties to the contract.

39 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(2).

40 The electronic system is at <<http://www.mlaw.gov.sg/covid19-relief>> (accessed 29 May 2020).

41 See reg 7(2) of the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020). The electronic system particularly facilitates service of a Relief Notification, submission of forms and documents to the Registrar or an assessor, and service of such forms and documents.

25 Party A will also need to authenticate its identity via SingPass (for individuals)⁴² or CorpPass (for business entities).⁴³

26 Once the above steps have been done, Party A will need to do three things in order to obtain the Relief Notification. These will be covered in the following paragraphs.

27 All subsequent references to form numbers (for example, Form 1, Form 2, *etc*) are based on the Regulations and in the electronic system.

A. Step 1: filing Relief Notification on electronic system

28 Once Party A has logged into the electronic system, Party A must fill in the Relief Notification in accordance with Form 1, which must contain all prescribed information.⁴⁴

B. Step 2: serving Relief Notification on Party B and other relevant parties

29 The Relief Notification must be served on Party B (and other prescribed parties)⁴⁵ in accordance with the prescribed ways under the Regulations.⁴⁶

42 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 8(1). See also <<https://go.gov.sg/notification-for-relief-singpass>> (accessed 29 May 2020).

43 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 8(2). See also <<https://go.gov.sg/notification-for-relief-corppass>> (accessed 29 May 2020). A business entity will need to authenticate its identity by its duly authorised representative, *eg*, an authorised employee or director.

44 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 9(1).

45 See reg 9(2) of the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020). This may include the issuer of the related performance bond.

46 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 5(1).

C. Step 3: submitting memorandum of notification for relief to court or arbitral tribunal

30 This step applies only when:⁴⁷

(a) there are pending court or arbitral proceedings against Party A (or Party A's guarantor or surety) in relation to the inability to perform the contractual obligation due to the COVID-19 event, at the time the Relief Notification was served; or

(b) court or arbitral proceedings are commenced after the Relief Notification was served (in breach of s 5(2) of the Act).

31 If Party A wishes to obtain a stay or dismissal of those proceedings, Party A may file with the court or arbitral tribunal a memorandum of notification for relief (Form 2) with the prescribed information.⁴⁸

D. Withdrawal of Relief Notification

32 Party A may withdraw the Relief Notification at any time, using the notice of withdrawal (Form 3).⁴⁹

33 Party A must serve the notice of withdrawal on all other parties to the contract, and within one working day after the date of such service, serve the notice of withdrawal on any guarantor or surety for the subject obligation and the issuer of a related performance bond (if any).⁵⁰

47 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) regs 9(4) and 9(5).

48 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) regs 9(4) and 9(5).

49 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 10(1).

50 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 10(2).

34 Additionally, within two working days after Party A serves the notice of withdrawal on all other parties to the contract, Party A must:⁵¹

(a) submit the notice of withdrawal on the Registrar together with a declaration (Form 4) of service on the abovementioned parties, if an application for an assessor's determination has already been submitted; and

(b) file with the court or arbitral tribunal a memorandum of service of withdrawal (Form 5), if a copy of the Relief Notification was lodged with the same.

35 Party A is not, by virtue of this withdrawal of its Relief Notification, prohibited from serving another Relief Notification.⁵²

VIII. Effects of Temporary Reliefs

36 Apart from the Temporary Reliefs for Party A, there are two additional effects when Party A serves the Relief Notification.

A. Extension of statutory limitation period

37 Firstly, any statutory limitation period will be extended from the Relief Notification's date of service until the earlier of:⁵³

(a) the expiry of the Temporary Relief Period;

(b) Party A's withdrawal of the Relief Notification; or

(c) an assessor's determination that Party A's application for Temporary Relief is not one to which the Act applies.

51 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) regs 10(3) and 10(4).

52 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 10(5).

53 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 5(7).

B. Stay of legal proceedings

38 Secondly, any pending court proceedings or arbitration (under the Arbitration Act) will be stayed once Party A lodges the Relief Notification with the court or arbitral tribunal.⁵⁴ These proceedings will be stayed until the earlier of:⁵⁵

- (a) the expiry of the Temporary Relief Period;
- (b) Party A's withdrawal of the Relief Notification; or
- (c) an assessor's determination that Party A's application for Temporary Relief is not one to which the Act applies.

IX. Additional reliefs for construction industry

39 In addition to the Temporary Reliefs set out at para 11, the construction industry has been provided with three additional reliefs, which are set out below.

A. Limitation in calling performance bonds

40 For one, where Party A is unable to perform its contractual obligations due to a COVID-19 event, Party B cannot call on the performance bond (even if contractually allowed to) at any time:⁵⁶

- (a) earlier than seven days before the performance bond's expiry date; or
- (b) where the performance bond is extended under this Act, earlier than seven days before the performance bond's extended expiry date.

41 Party B's limitation in calling on the performance bond will end and Party A will not be entitled to extend the performance bond under the Act if:⁵⁷

54 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) (the "Act") s 5(8). Other proceedings may be stayed if prescribed under the Act.

55 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) ss 5(8)(d)–5(8)(f).

56 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(2).

57 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(4).

- (a) Party A withdraws the Relief Notification; or
- (b) an assessor determines that Party A's application for Temporary Relief is not one to which the Act applies.

B. *Extension of performance bonds*

42 Notwithstanding its contractual terms, Party A can also extend the performance bond to seven days after the Temporary Relief Period or, alternatively, a date as agreed between Party A, Party B, and the performance bond issuer.⁵⁸

43 In order to extend the performance bond, Party A must:⁵⁹

- (a) apply to the performance bond's issuer to extend the said performance bond seven days before its expiry; and
- (b) serve a notice of the application on Party B at the same time.

C. *Defences to liquidated damages or other damages and other defences*

44 Party A will not be liable to pay liquidated damages or other damages under the contract for the duration that Party A is unable to perform its obligations (starting from 1 February 2020) due to the COVID-19 event. This will apply until the end of the Temporary Relief Period.⁶⁰

45 Additionally, Party A will have a defence to a claim for breach of contract if its inability to perform its obligations (starting from 1 February 2020 until the end of the Temporary Relief Period) is, to a material extent, caused by the COVID-19 event.⁶¹

46 However, Party A's defence to any breach of contract (as set out in para 45 above) will not affect any party's contractual

58 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(3).

59 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(3).

60 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(5).

61 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(5).

right or obligation before 1 February 2020 and after the Temporary Relief Period.⁶²

47 Party A's defence to any breach of contract (as set out in para 45 above) will also not affect any court judgment, arbitral award, adjudication determination or settlement made before Party A serves the Relief Notification.⁶³

X. Consequences of contravening valid Relief Notification

48 Any party that contravenes any Temporary Reliefs set out in para 11 above after receiving a valid Relief Notification shall be liable on conviction to a fine not exceeding \$1,000, unless that party had a reasonable excuse for doing so.⁶⁴

49 Additionally, any proceedings in breach of the Temporary Reliefs will be dismissed upon lodgement of the Relief Notification with the court or arbitration tribunal.

50 Other actions taken after receiving a valid Relief Notification will also be void, including:⁶⁵

- (a) appointment of a receiver or manager over any property or undertaking of a person;
- (b) a call on a performance bond or equivalent;
- (c) forfeiture of a deposit or part of a deposit; and
- (d) enforcement of any security.⁶⁶

XI. Contesting the Relief Notification

51 Party B (or any party to the contract) can apply for an assessor's determination as to whether Party A is entitled to

62 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(7)(a).

63 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 6(7)(b).

64 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 8(1).

65 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 8(4).

66 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 8(3). An exception applies where the party seeking to enforce is a *bona fide* purchaser for value without notice of the Relief Notification.

the Temporary Reliefs if that party is dissatisfied with Party A's Relief Notification.⁶⁷

A. Qualifications of assessor

- 52 The Registrar will appoint an assessor who can either be:
- (a) a legally-trained person, a public accountant, chartered accountant with at least three years of working experience;⁶⁸ or
 - (b) an individual with at least three years' working experience in or relating to the specified fields.⁶⁹

B. Application for assessor's determination

- 53 An application for an assessor's determination must:⁷⁰
- (a) comply with the form and manner specified by the Regulations;
 - (b) be accompanied by the prescribed fee;⁷¹ and
 - (c) be served on (i) the other parties to the contract; (ii) any guarantor or surety for Party A's obligations in the contract; and (iii) other prescribed persons.⁷²

54 In making the determination, the assessor must seek to achieve an outcome that is just and equitable in the circumstances of the case.⁷³ In so doing, the assessor can consider various factors⁷⁴ such as Party A's ability and financial capacity to

67 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 13.

68 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) regs 11(a)–11(c).

69 The fields specified in reg 11(d) of the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) are law, accountancy, finance, business management, building and construction, or architecture.

70 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 12.

71 Applications for an assessor's determination are presently free. See reg 14(4) of the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020).

72 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 12(2).

73 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 13(2)(b).

74 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 13(2)(a).

perform the obligation that is subject of the application; and other prescribed factors.

55 No party may be represented by lawyers in the proceedings with the assessor, and each party must bear its own costs.⁷⁵ However, the Amendment Bill will allow parties to be represented by lawyers, if the assessor gives permission.⁷⁶

C. Documents to be submitted to or sent by Registrar or assessor

56 Every document to be submitted to the Registrar or assessor must be submitted using the electronic system, unless:

- (a) the person does not have a SingPass or CorpPass account;
- (b) the electronic system is unavailable; or
- (c) there is some other good reason why submission cannot be done using the electronic system.

In which case the Registrar or assessor may direct that the document be submitted in another way.⁷⁷

57 Where documents are to be sent by the Registrar or assessor, these will be sent to a person's designated e-mail address or designated postal address⁷⁸ or, in the absence of which, to that person's ordinary address.⁷⁹

75 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) ss 14 and 15.

76 COVID-19 (Temporary Measures) (Amendment) Bill (passed 5 June 2020) cl 12.

77 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 12(2).

78 See the definition in reg 2 of the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) – this will generally be the party's e-mail or postal address as specified in the Relief Notification or in the application for assessor's determination.

79 See the definition in reg 2 of the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) ("Regulations") – this generally refers to a company or unincorporated association's registered office or principal office in Singapore, or its last known place of business; an individual's usual or last known place of residence or business in Singapore; or a partnership's (but not an LLP's) principal or last known place of business in Singapore. See also reg 12(3) of the Regulations.

D. *Communications by Registrar or assessor with parties*

58 The Registrar or assessor may communicate with any party by e-mail, post or other means as may be agreed.⁸⁰

59 For the duration of the proceedings, where a party has agreed to communicate by any of the aforesaid means, that party must monitor the said means for communication from the Registrar, the assessor, or the registry's authorised officer.⁸¹

E. *Effect of assessor's determination*

60 Importantly, the assessor's determination is non-appealable and binding on all the parties to the application and all parties claiming under or through them.⁸²

61 The assessor will not have the additional powers under s 13(3) of the Act to make a further determination⁸³ in respect of cases involving construction contracts and performance bonds, which have been excluded from such purview pursuant to reg 22 of the Regulations.

62 However, under the Amendment Bill, the assessor will have the power to vary or replace the determination if there is a material change in the circumstances after it has been made and it is just and equitable for the variation or replacement to be made. The Amendment Bill also allows the assessor to grant a party an extension of time to make payment or require the parties to attend a further review and make an appropriate further determination.⁸⁴

80 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 13(1).

81 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 13(3).

82 COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) s 13(9).

83 The additional powers under s 13(3) of the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) include requiring a party to the contract to do anything or pay any sum of money to discharge any contractual obligation; and other further determinations which are not expressly stated in the Act but which achieve a just and equitable outcome.

84 COVID-19 (Temporary Measures) (Amendment) Bill (passed 5 June 2020) cl 11.

XII. Procedure to apply for assessor's determination

63 There are five steps to consider when applying for an assessor's determination regarding a Relief Notification, which are set out below.

A. Application period for assessment

64 Firstly, any party applying for an assessor's determination (the "Applicant") regarding a Relief Notification can do so anytime from the start of the Temporary Relief Period until two months after the Temporary Relief Period ends.⁸⁵

B. Submitting the application to the Registrar

65 Secondly, to apply for an assessment, the Applicant will need to submit the application to the Registrar,⁸⁶ and provide a copy of the Relief Notification as well as the contract.⁸⁷

66 The Registrar will review the application to check whether it is in order.

C. Service of approved application

67 Thirdly, once the Registrar is satisfied with the application, the Registrar will send the Applicant an acknowledgement of receipt, as well as a copy of the response form (which the other party will have to fill in).⁸⁸

68 Within two working days of the Registrar's acknowledgement, the Applicant must serve the application, the

85 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 14(2).

86 The Registrar is appointed by the Minister for Law under s10(1) of the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020).

87 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) regs 14(3)–14(5).

88 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 14(6).

Registrar's acknowledgement and response form to the other prescribed parties.⁸⁹

69 Within one working day after serving the documents on the other prescribed parties as set out in para 68, the Applicant must submit a declaration (Form 4) to confirm such service.⁹⁰

70 Additionally, if the Applicant is aware of court or arbitral proceedings, whether with the Applicant or Party B or by the Applicant's guarantor or surety regarding the COVID-19 event, the Applicant must notify the court or arbitral tribunal by serving it the prescribed documents within two working days after serving the same on the parties set out in para 68.⁹¹

D. Service of response documents

71 Fourthly, Party B or any other relevant party to the contract (the "Respondent") may submit the prescribed response form to the Registrar on the Applicant and the other prescribed parties within five working days after receiving the documents set out in para 68.⁹²

E. Appointment of assessor and notice of hearing

72 Lastly, if the Registrar is satisfied that:⁹³

- (a) the Applicant's application is in order;
- (b) the prescribed documents have been duly served;

89 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 14(7). This includes the other parties to the contract, any guarantor or surety for the subject obligation and the issuer of a related performance bond (if applicable).

90 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 14(10).

91 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 14(11).

92 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 15.

93 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 17.

(c) the Respondent's Response Form has been duly submitted and served; or

(d) alternatively, if the Response Form has not been served, the Applicant has complied with the Registrar's direction to contact the Respondent by the means specified,

the Registrar will send the Applicant and Respondent a notice of the assessor's appointment and (if applicable) a notice of the date and place for the hearing.

XIII. Assessor's hearing and determination

73 There is no specified period within which an assessor must determine the application. The Regulations only set out that the assessor must carry out the statutory duties in a "timely manner".⁹⁴

74 Additionally, the Registrar may appoint more than one assessor to hear an application.⁹⁵

A. Mode of hearing

75 The hearings are generally held by e-mail correspondence.⁹⁶ However, the assessor may direct that hearing be held in person or via video conferencing or other electronic means.⁹⁷

76 Alternatively, the assessor may dispense with a hearing and determine the matter solely on the documents submitted by the parties.⁹⁸

94 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 18(1).

95 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 21.

96 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 18(2).

97 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 18(3).

98 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 18(7).

B. Party absent from hearing

77 If any party is absent from the assessor's hearing, the assessor can:⁹⁹

- (a) decline to make a determination and dismiss the application; or
- (b) hear and make a determination on the application.

78 If the application was decided or dismissed with a party being absent, the absent party may subsequently apply to set aside that determination¹⁰⁰ by the prescribed means set out in the Regulations.¹⁰¹

79 However, the absent party will need to satisfy the assessor that (a) there was good reason for being absent; and (b) it is just in the circumstances to set aside the determination or dismissal.¹⁰²

80 When the assessor decides to set aside the determination, the assessor may do so on such terms that the assessor considers just and proceed to hear the subsequent application.¹⁰³

C. Determinations made in proceedings with multiple assessors

81 If more than one assessor is appointed to make a determination on an application, the determination must be unanimous.¹⁰⁴

99 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 20(1).

100 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 20(2).

101 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 20(3).

102 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 20(2).

103 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 20(5).

104 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 21.

D. Notification of outcome to court or arbitral tribunal

82 Within two working days after the application for an assessor's determination has been dismissed, withdrawn or determined, the applicant must submit a prescribed notification to the court or arbitral tribunal about the status of the application.¹⁰⁵

E. Records

83 The Registrar will keep the records of every assessor's determination (including the parties' documents) for two years after the end of the Temporary Relief Period.¹⁰⁶

84 Any relevant party to the determination may search for and obtain a copy of the record, upon paying a prescribed fee.¹⁰⁷

XIV. Conclusion

85 Parliament has moved quickly to react to the COVID-19 pandemic that has caused widespread delay to construction projects, due to various movement control measures across the world which have affected manpower availability, often through no fault of the various construction parties. Similarly, supplies of construction material have also been materially affected due to the worldwide supply disruption.

86 In the light of the severity of these issues, the Act is timely in providing the far-reaching reliefs to the construction industry and targets the drastic cash-flow issues that the construction industry is likely to face in this COVID-19 pandemic.

105 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 23.

106 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) regs 28(1) and 28(4).

107 COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (S 303/2020) reg 28(3).