

## Client Alert

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## The COVID-19 (Temporary Measures) Act 2020: What you need to know

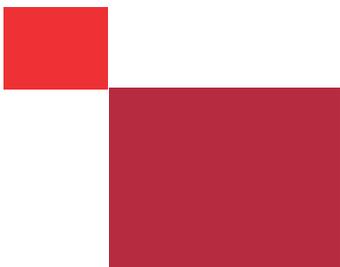
The Singapore Parliament has passed the COVID-19 (Temporary Measures) Act (2020) (the "**Act**") in an attempt to alleviate the consequences that the global pandemic has caused to businesses in Singapore.

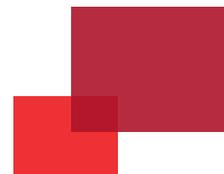
In summary, the Act brings into force temporary measures, which:

- essentially suspend contractual obligations under a range of *scheduled contracts*;
- provide relief to financially distressed individuals, businesses and firms;
- set out alternative arrangements for the conduct of company meetings;
- introduce measures to keep courts functioning through remote communications technology; and
- restrict certain activities by the general public to prevent the spread of COVID-19.

The Act is made up of seven parts:

- Part 1 covers preliminary issues including the key definitions used in the Act;
- Part 2 sets out the nature of the temporary relief available for the inability to perform certain contractual obligations;
- Part 3 sets out provisions relating to temporary relief for financially distressed individuals, firms and businesses;
- Part 4 sets out provisions relating to temporary measures for the conduct of meetings;
- Part 5 sets out temporary measures for court proceedings;
- Part 6 sets out temporary measures for the remission of property tax; and
- Part 7 sets out temporary control orders to restrict the spread of COVID-19.





## When does it come into force?

The Act was passed by Parliament on 7 April 2020 with commencement as follows:

- Part 4, which commenced on 27 March 2020.
- Section 2, Part 5 and sections 34(1) and (2) of Part 7 relating to control orders and restrictions on movement, which commenced on 7 April 2020.
- Sections 34(3) to (9) and 35, which commenced on 8 April 2020.

Initially, temporary relief will be available for a period of six months (the *prescribed period*), though the total period of temporary relief must not extend beyond one year.

## Who does it apply to?

Part 2 of the Act sets out various relief measures that may be available in the context of a party's inability to perform its obligations under *scheduled contracts* if such non-performance is, to a material extent, caused by a *COVID-19 event*.

Part 3 of the Act sets out various relief measures potentially available to a broader class of financially distressed individuals, firms and other businesses, essentially raising threshold triggers under insolvency-related legislation in Singapore.

## What is a *scheduled contract*?

A "**scheduled contract**" sets out a number of eligible contracts in which temporary relief may be available as a result of a failure to perform obligations because of a COVID-19 event and includes:

- a loan facility by a licensed bank or finance company to an eligible *enterprise*<sup>1</sup>, secured against commercial or industrial immoveable property, plant, machinery or fixed assets in Singapore used for manufacturing, production or other business purposes;
- a performance bond relating to a construction or supply contract;
- a hire purchase agreement for plant, machinery or fixed assets used for manufacturing, production or other business purposes, or a commercial vehicle;
- event contracts;
- supply contracts;
- tourism related contracts; and

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<sup>1</sup> *Enterprise* means (1) an entity having annual turnover (or group annual turnover) of less than SGD 100 million, and (2) which is 30 per cent or more directly or indirectly owned by Singapore citizens and permanent residents.



- a lease or license of non-residential commercial immovable property.

The Act further clarifies the meaning of some of the contracts, including:

- a "**construction contract**" which references contracts set out in the Building and Construction Industry Security of Payment Act;
- a "**supply contract**" which references contracts set out in the Building and Construction Industry Security of Payment Act, including a main contract and sub-contract;
- an "**event contract**" which broadly includes contracts for venues, accommodation, amenities, transport, entertainment, catering or other goods or services for business meetings, shows and events, conferences and exhibitions, weddings or other social gatherings and sports events; and
- a "**tourism related contract**" which relates to the international carriage of passengers by land or sea (and not air), transport, entertainment, short-term accommodation, dining, catering, tours and tourism-related goods and services and the promotion of tourism in Singapore.

## What is a COVID-19 event?

Under the Act, a "**COVID-19 event**" includes the virus itself and compliance with any law in Singapore or elsewhere made in relation to it.

Essentially, relief is available for the non-performance of obligations under a *scheduled contract* if it is materially caused by a *COVID-19 event*.

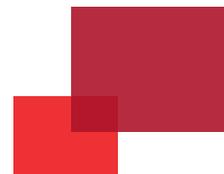
## What relief does the Act provide?

Part 2 of the Act provides temporary relief to certain obligations under *scheduled contracts* to be performed on or *after* 1 February 2020 if they were entered into or renewed *before* 25 March 2020, temporarily delaying actions for contractual breach.

During the prescribed period, the commencement of any court, arbitration or insolvency proceedings, and the enforcement of judgments and domestic arbitration awards, are barred.

Other relief measures potentially available to a broader class of financially distressed individuals, firms and other businesses are set out in Part 3 of the Act, essentially raising threshold triggers and extending time periods relating to statutory demands under insolvency-related legislation in Singapore.

Note that relief provided by the Act is *temporary* and it does not amount to a permanent discharge of the unperformed obligation.



## How do you apply for relief?

Parties to *scheduled contracts* seeking relief will need to serve a notification for relief. The notification must contain information on the other party or parties to the contract, any guarantor or surety of the party's obligation in the contract, and any other person as prescribed.

Any party to the contract may apply to the Registrar to appoint an assessor to make a determination on:

- whether the case is one which temporary relief should be granted for the inability to perform the obligation under the *scheduled contract* due to a *COVID-19 event*; and/or
- whether it is just and equitable in the circumstances of the case for the deposit or any part of a deposit to be forfeited.

## Assessor's determination

Where parties disagree as to whether a party is entitled to temporary relief under the Act, either party may make an application to a panel of assessors for a determination. Parties cannot be legally represented in this process and each party must bear its own costs for the proceedings before the assessor.

Under the Act, for events and tourism-related contracts, a counterparty may not forfeit any deposit in whole or in part taken under the contract on the basis of a party's failure to perform their obligations. However, the counterparty may apply for an assessor's determination that the forfeiture of the deposit is just and reasonable in the circumstances of the case.

## Court proceedings

To facilitate court proceedings, the Act also provides new temporary measures for the conduct of court proceedings using remote communication technology. These measures remain in force for any period that any control measure relating to a *COVID-19 event* is in force and any further period that the Chief Justice determines is necessary for the purposes of conducting court proceedings in a safe and efficient manner.

The court may allow witnesses to give evidence via video-link using remote communication technology approved by the Chief Justice. The court may make such an order if it is satisfied that sufficient administrative and technical facilities arrangements are available for the witness to appear or give evidence and that it is in the interests of justice to do so. The court must not make such an order if doing so would be inconsistent with its duty to ensure that the proceedings are conducted fairly.

Where court proceedings are conducted using such remote communication technology, it remains an offence under the Administration of Justice (Protection) Act to use or bring any audio recorder, electronic device or other instrument for



audio or visual recording into any place where the judge, witness or any person is participating in such proceeding.

## Company meetings

Part 4 of the Act sets out a number of provisions to facilitate social distancing norms and introduces alternative methods for holding meetings through electronic communications.

Alternative provisions may also be prescribed in the future in relation to notice, quorum, voting and proxy requirements.

## What are the implications of the Act?

Among other things, the Act will have general effect of temporarily excusing contractual breach under *scheduled contracts*, initially for a period of six months:

- if the breach was to a material extent, caused by a *COVID-19 event*; and
- it relates to contractual obligations arising after 1 February 2020 under contracts entered into (or renewing) before 25 March 2020.

It also provides relief to a broader class of financially distressed individuals, firms and other businesses by essentially raising threshold triggers under insolvency related legislation in Singapore.

We consider its implications for businesses across a number of sectors below.

- [Banking & Finance](#)
- [Construction](#)
- [Corporate](#)
- [Intellectual Property](#)
- [Real Estate](#)
- [Restructuring & Insolvency](#)



# THE COVID-19 (TEMPORARY MEASURES) ACT, 2020

## Implications

### BANKING & FINANCE

Borrowers will be particularly concerned with upcoming payment obligations under financing agreements; and whether cash flow is available to meet scheduled payments of interest or principal. What relief does the Act potentially provide for them?

Although loan facilities are expressly included in the list of scheduled contracts, note that it only includes certain secured loans with a bank or finance company licensed under the Singapore Banking Act or Singapore Finance Companies Act. Further, it is limited to loan facilities made available to *enterprises*.

An "**enterprise**" under the Act, means a body corporate or an unincorporated entity set up and carrying out business in Singapore where:

- at least 30 per cent of the shares are held by Singaporean citizens or permanent residents; and
- the *turnover* of the group to which it belongs (within the meaning of applicable accounting standards),

is less than SGD 100 million in the last financial year.

Secured loans are also further qualified. Only those loans secured by commercial or industrial immoveable property; or plant, machinery or fixed assets used for manufacturing, production or other business purposes, in each case, located in Singapore, will be considered a *scheduled contract* under the Act.

Therefore, borrowers who may be able to claim relief are limited to those that fall within these parameters, with the broader requirement that the loan facilities:

- must have been entered into before 25 March 2020; and
- the inability to perform was materially caused by a COVID-19 event and is in relation to obligations to be performed on or after 1 February 2020.

The temporary relief available is not limited to payment obligations.

In the absence of express reference, the provisions of the Act do not apply to *unsecured* facilities or facilities which are not secured by immoveable property or plant, machinery or fixed assets used for manufacturing, production or other business purposes, in each case located in Singapore.

Note that *performance bonds* are included under the list of *scheduled contracts* in relation to construction and supply. In this context, such performance bonds are often assigned to lenders in any security package for the financing of the underlying construction or supply. Pursuant to Section 6 of Part 2 of the Act, lenders will not be able to enforce such performance bond unless it has less than 7 days to go until its expiry.



Further, where a defaulting party under a performance bond applies for an extension of its term and serves notice to its application to its counterparty, it will be automatically extended as it may be agreed between the parties to the contract and the issuer of the performance bond.

Enterprises who intend to seek relief under the Act will need to serve a notification for relief within the specified period (which has yet to be announced) to the other parties in the contract.

Thereafter, should any disputes arise, they may appoint an *assessor* to determine if their case falls within the scope of the Act.

In the context of the Act, the Monetary Authority of Singapore ("**MAS**") had already [announced](#) on 31 March 2020 that banks had committed to defer principal payments on secured loans to SMEs which are in good standing with their banks and finance companies until the end of 2020, subject to assessment of the quality of the security package.

Generally, the contractual rights of banks to charge fees and interest for non-payment or late payment are otherwise, not affected, other than the right to commence certain legal actions on a default on a loan covered by the Act.

Enterprises seeking protection under the Act should therefore keep in mind that they might incur late payment charges and higher interest rates in the future.



## CONSTRUCTION

The Act applies to a "*construction contract*" and "*supply contract*" as defined under the Building and Construction Industry Security of Payment Act (the "**SOP Act**").

This includes most construction work in Singapore but there will be notable exceptions such as residential projects that do not require the Building and Construction Authority's approval. In this regard, it is also worth mentioning that the SOP Act was recently amended to expand its scope to include contracts for prefabrication (whether in or outside Singapore).

The general relief given by the Act is to prohibit parties in *scheduled contracts* from taking legal action against a non-performing party during the "*breathing space*" period of six months. For example, there is a moratorium provided under Section 5(2) in relation to the enforcement of an adjudication determination under the SOP Act. Specifically for construction and supply contracts, there are additional reliefs at Section 6 (that would apply regardless of anything stated in the contract). These include:

- Prohibition against making a call on performance bonds (unless there is seven days or less to its expiry). However, there is also a sub-section that facilitates an extension of performance bonds during these times.
- For the purposes of calculating liquidated damages or assessing other damages (presumably delay damages), where the inability to perform occurs on or after 1 February 2020 and was caused by a *COVID-19 event*, the period for which the inability to perform will be disregarded in determining any period of delay in performance.
- The inability to supply goods or services in accordance with the terms of the contract, meaning the inability to perform an obligation (occurring on or after 1 February 2020) that was to a material extent caused by a *COVID-19 event* shall itself be "*a defence to a claim for a breach of contract in respect of the subject inability*".

Based on the provisions, the intent of this Act is to protect contractors and sub-contractors that carry out the work. The Act essentially excuses non-performance of an obligation during the relief period and parties should carefully review their construction and supply contracts as well as performance bonds to see whether a breach of obligation may benefit from relief under the Act due to any impact arising from a *COVID-19 event*.

The Act also imposes notification requirements that would require compliance. A party that intends to seek relief, whether with or without prior demand for performance, must serve notification for relief containing information on the parties to the contract, and any guarantor or surety for obligations in the contract.

It would be advisable to start looking at your construction and supply contracts as well as performance bonds to see any impact arising from COVID-19 and the new legislation. Apart from the notification requirements under the Act, the notification requirements under your contracts (as may be applicable) will still need to be heeded. Force majeure provisions, in particular, may also offer protection in these circumstances - and should not be neglected.

The Act, however, does not address how costs incurred over this period are to be managed. This will be a matter to be decided under the terms of the relevant contract. We will be pleased to advise further on the subject, if needed.



## CORPORATE

Section 27 of Part 4 of the Act introduces temporary measures for the conduct of meetings to allow flexibility for meetings to be held in compliance with the Ministry of Health's Safe-Distancing Regulations under the Infectious Diseases Act effective on 27 March 2020 (and subsequent and progressive control measures), while at the same time:

- maintaining propriety in the conduct of these meetings; and
- introducing new safeguards.

The Minister for Law may by order prescribe alternative arrangements for the meeting or class of meetings where the Minister considers that it would be inexpedient or impracticable for the meeting or class of meetings to be convened, held or conducted in the manner provided for in the written law or legal instrument in view of a control measure.

The effect of this prescription will be to imply the alternative arrangements into any entity's constituting document, however called, and the entity's governing rules and regulations, even where these already allow for virtual meetings. These alternative arrangements and safeguards that may be prescribed include provision for/of the following:

- a meeting to be convened, held or conducted, whether wholly or partly, by electronic communication, video conferencing, tele-conferencing or other electronic means;
- a period of notice for a meeting;
- the quorum for a meeting to be reduced to a specified number;
- voting by electronic means at a meeting;
- voting at a meeting to be made by proxy and for the number of proxies to be limited to a specified number;
- the person who may be appointed as proxy for a meeting;
- questions to be tabled at a meeting by any of the following means:
  - (i) in writing;
  - (ii) by electronic communication, video conferencing, tele-conferencing or other electronic means;
- responses to questions mentioned in paragraph (g) to be communicated by electronic communication, video conferencing, tele-conferencing or other electronic means;
- notices for a meeting and proxies to be used at a meeting, appointment forms for proxies for a meeting, and circulars and other documents relating to a meeting, to be given or sent by electronic communication or other electronic means;
- notices for a meeting to supersede any previous notice that may have been given; and
- a meeting to be deferred.



The Minister may also provide for any other measures that the Minister considers necessary or expedient.

A meeting convened, held, conducted or deferred in accordance with these prescribed alternative arrangements will be deemed to satisfy the requirements relating to the convening, holding, conduct or deferral of meetings under the relevant written law or legal instrument in respect of which the alternative arrangements were prescribed, despite anything to the contrary in any law or legal instrument.

Any notice, form, circular or other document given or sent in accordance with the prescribed alternative arrangements will be deemed to satisfy the requirements relating to the notice, form, circular or other document under the relevant written law or legal instrument in respect of which the alternative arrangements were prescribed, despite anything to the contrary in any law or legal instrument.

Section 27(7) sets out a non-exhaustive list of all the legal instruments within scope of this provision, including:

- constitution of a company incorporated under the Companies Act;
- constitution of a variable capital company incorporated under the Variable Capital Companies Act;
- trust deed constituting a business trust registered under the Business Trusts Act;
- rules of a society registered under the Societies Act;
- by-laws of a co-operative society registered under the Co-operative Societies Act;
- constitution, written scheme or trust deed constituting a school registered under the Education Act;
- rules of a mutual benefit organisation registered under the Mutual Benefit Organisations Act;
- standing orders of town councils established under Town Councils Act; and
- rules of trade unions registered under the Trade Unions Act.

Issuers of securities listed on the Singapore Exchange ("**issuers**") should additionally note that the Accounting and Corporate Regulatory Authority ("**ACRA**"), MAS and the Singapore Exchange Regulation ("**SGX RegCo**") have jointly issued an [update guidance on general meetings as at 31 March 2020](#) on safe-distancing measures for issuers when conducting meetings, in response to the Ministry of Health's advisory on safe-distancing measures on 24 March 2020.

MAS and SGX RegCo have issued an [update guidance on general meetings as at 31 March 2020](#), which sets out safe-distancing measures for issuers when conducting meetings, in response to the Ministry of Health's advisory on safe-distancing measures on 24 March 2020.

An issuer can choose to defer its Annual General Meeting ("**AGM**") to after 30 April 2020, as set out in SGX RegCo's announcements on 7 February 2020 and 27 February 2020, if the specified criteria and conditions are fulfilled.

All companies should also note ACRA's press release: [Extension Of Deadline For Holding Annual General Meetings and Filing Annual Returns](#).

ACRA will grant a 60-day extension of time for all companies whose AGMs are due during the period of 16 April to 31 July 2020.



Companies that had previously been granted extension of time to hold their AGMs within this period will also be given a further 60 days of extension from the last date of extension.

The Annual Return filing due dates for the period 1 May to 31 August 2020 for all companies will also be extended for 60 days. There is no need for these companies to apply for the extension of time with ACRA.

ACRA will also not impose any penalties on companies whose AGMs are due during the period 1 April to 15 April 2020 if they hold the AGM within 60 days of the due date. Their Annual Return filing due dates will also be extended for 60 days. There is no need for these companies to apply for the extension of time.

Issuers who choose to proceed with AGMs or general meetings before 30 April 2020 should note that the ACRA, MAS and SGX RegCo joint guidance requires the conduct of the meeting in a manner that:

- provides opportunity for shareholders to ask questions;
- provides for the meeting to be shown by *live* webcast; and
- allows for proxy voting.

At these meetings, any quorum requirements will be satisfied through the attendance of the minimum number of shareholders specified in the issuer's constitution (which may be satisfied through the attendance of any director or senior management of the issuer who holds shares), or up to the number of individuals permitted under the Regulations, whichever is lower.

Issuers must allow shareholders an opportunity to ask questions in the following ways:

- issuers must invite their shareholders to submit any questions they may have in advance;
- issuers should then publicly address substantial queries received from shareholders at the general meeting via the issuer's website, through "live" webcast, and on SGXNet; and
- issuers should consider other arrangements, such as organising virtual information sessions before the general meetings and the close of proxy voting to provide shareholders with a forum to ask questions and engage with management and the Board of Directors.

In terms of proxy voting:

- shareholders must appoint the chairperson of the general meeting to act as proxy and direct the vote at the general meeting;
- issuers should provide at least 21 days' notice to shareholders on the general meetings to allow shareholders to consider the matters, to pose questions if necessary and vote via proxy;
- shareholders must submit the proxy form by mail or electronically (such as by e-mail); and
- Central Provident Fund ("**CPF**") or Supplementary Retirement Scheme ("**SRS**") investors who wish to appoint the chairperson as their proxy should approach their respective CPF Agent Banks or SRS Operators to submit their votes at least seven working days before the general meetings.



## INTELLECTUAL PROPERTY

Given the mandatory cancellation or postponement of large-scale events such as exhibitions and concerts due to COVID-19, it is expected that various licensing arrangements made with collecting societies in Singapore for the use of music and other copyrighted content during such events will be affected.

The Act broadly defines *event contracts* to mean contracts for the provision of goods and services for events such as exhibitions, concerts and weddings (amongst others).

Accordingly, licensing agreements entered into on an *ad-hoc* basis for such events may potentially fall under the scope of the Act.

Event organisers who are unable to fulfil their obligations under such licence agreements due to COVID-19 may thus be able to obtain temporary relief under the Act.

However, this will only apply to event organisers who had entered into such contracts before 25 March 2020, and had originally planned for their event to occur on or after 1 February 2020.

Furthermore, the Act will not completely remove their legal obligations, but will only suspend legal obligations during the prescribed period of six months from when the Act came into force (which may be subject to future extensions).

Event organisers who intend to seek relief under the Act would need to serve a notification for relief within the specified period (which has yet to be announced) to the other parties in the contract. Thereafter, should any disputes arise, they may appoint an assessor to determine if their case falls within the scope of the Act.



## REAL ESTATE

The Act applies to a lease or licence of non-residential immovable property. Section 5 of Part 2 of the Act provides temporary relief of up to six months commencing from a date to be set out by the Minister for Law in the Government Gazette, to those who cannot fulfill their contractual obligations under the lease or licence.

Under Section 5 of Part 2 of the Act, if a party (for e.g. the tenant) is unable to perform an obligation under the lease or licence and such inability is to a "material extent caused by the COVID-19 event", then the other party (for e.g. the landlord) is prohibited from taking the following actions against the non-performing party:

- terminating the lease for non-payment of rent or other moneys due under the lease or licence;
- exercise of its right of re-entry or forfeiture;
- commencing court or winding up proceedings against the non-performing party or non-performing party's guarantor; or
- commencement or levying of execution, distress or other legal process against any property of the non-performing party or the non-performing party's guarantor, except with the leave of the court and subject to such terms as the court may impose.

The Minister for Law, had clarified during the second reading of the Act that for a non-performing party to be entitled to the relief, the COVID-19 event must have "meaningfully caused the inability to perform. It need not be the dominant cause but it cannot be a remote insignificant cause either. It can cover situations where there is more than one reason for the inability to perform the obligation as long as COVID-19 is a material reason."

To receive the relief, the non-performing party has to serve a notification of relief to the other party. The prescribed information to be provided in a notification for relief will be set out in future regulations.

Upon being served with a notification for relief, the non-defaulting party may then challenge the notification and the applicability of the Act to provide relief to the non-performing party. The challenging party is to apply to an assessor for a determination as to whether the relief measures apply, and if so, to make a further determination to achieve a just and equitable outcome in the circumstances of the case.

There will be a stipulated deadline for when a party must submit a notification for relief as well as when a party in receipt of such a notification must then apply to challenge such a notification. These will also be set out in future regulations.

Importantly, the Act does not prohibit landlords from using the security deposit to offset rental payments that are due during the relief period.

The Act, however, does not address the issue of whether landlords are prohibited from imposing interest for late payment of rent. This will be a matter to be decided under the terms of the relevant contract. We will be pleased to advise further on the subject, if needed.



In the FY2020 Budget and the FY2020 Supplementary Budgets announced on 18 February and 26 March 2020 respectively, the Deputy Prime Minister and Minister for Finance Mr Heng Swee Keat announced that owners of non-residential properties were granted a property tax rebate of 30%, 60% or 100%, depending on the type and nature of the property for the tax payable in 2020. The rebate is intended to help businesses deal with the impact from COVID-19. For most properties, the 100% property tax rebate works out to more than one month of rent. The rebate is granted to the owner of the property, who is liable for the property tax, in respect of each property tax account.

Part 6 of the Act imposes a duty on property owners to pass on to their tenants the full amount of the property tax rebate attributable to the rented property received by the property owners within a time period to be prescribed by the Minister for Law. Property owners are prohibited from imposing any conditions when passing on the rebate.

The property owners may pass on the property tax rebates to their tenants in cash or as a rental reduction.

The Act also requires the property owners to keep records evidencing that the benefit has been passed to the tenant for a period of 3 years after the end of the period to which the property tax rebate relates. Failure to properly pass on the rebate, or to keep a proper record, is an offence and the property owner shall be liable on conviction to a fine not exceeding SGD 5,000.

If a landlord fails to pass on the benefit fully within the time period to be prescribed by the Minister for Law, a tenant can take action against the landlord for failing to do so by applying to the Valuation Review Panel.

All such disputes must be brought before the Valuation Review Panel by 31 December 2021.

The determinations and further directions of a Valuation Review Panel are appealable to the High Court.



## RESTRUCTURING AND INSOLVENCY

Part 3 of the Act introduces several modifications to the insolvency framework in Singapore.

Under the Act, *safe harbour* provisions apply to company directors, who will be temporarily relieved from their obligations to prevent their company from insolvent trading if debts are incurred in the ordinary course of business. However, company directors will remain criminally liable if such debts are fraudulently incurred.

In relation to the Bankruptcy Act and the equivalent provisions under the Insolvency, Restructuring and Dissolution Act, the following modifications will be made:

- the minimum aggregate debt amount which triggers a report by the Official Assignee on the unsuitability of an individual for a debt repayment scheme will be raised from SGD 100,000 to SGD 250,000;
- the minimum aggregate debt amounts under section 56L(a) and (b) which trigger the issue by the Official Assignee of a certificate of inapplicability of a debt repayment scheme will be raised from SGD 100,000 to SGD 250,000 under section 56L(a) and from SGD 50,000 to SGD 125,000 under section 56L(b);
- the minimum aggregate debt amount for making a bankruptcy application will be raised from SGD 15,000 to SGD 60,000;
- the minimum number of days that must elapse since the service of a statutory demand for the presumption of a debtor's inability to pay a debt to arise will be extended from 21 days to six months;
- the maximum aggregate debt amounts for which a court may adjourn a bankruptcy application to enable the Official Assignee to determine if a debtor is suitable for a debt repayment scheme will be raised from SGD 100,000 to SGD 250,000.

The Act also introduces a defence to an offence under section 144 of the Bankruptcy Act for a bankrupt to incur a debt without expectation of being able to pay it. The defence is that the debt is incurred in the ordinary course of the bankrupt's trade or business, during the prescribed period, and before the application for voluntary arrangement or bankruptcy.

In relation to the Companies Act and the equivalent provisions under the Insolvency, Restructuring and Dissolution Act, the following modifications will be made:

- the minimum debt amount for which a company is deemed to be unable to pay its debts will be raised from SGD 10,000 to SGD 100,000;
- the period of non-satisfaction for which a company is deemed to be unable to pay its debts will be extended from three weeks to six months.

The Act also introduces a defence to an offence under section 339(3) of the Companies Act for an officer of a company to knowingly contract a debt without expectation of the company being able to pay it.

The defence is that the debt is incurred in the ordinary course of the entity's business, during the prescribed period, and before the appointment of a judicial manager or liquidator of the entity.

The Act also makes provision for a *moratorium* to arise if a party satisfies the requirements of obtaining temporary relief.



The *moratorium* will prevent a party from taking certain actions in relation to another party's inability to perform their contractual obligations under the contracts specified in the schedule of the Act. These actions include:

- the commencement or continuation of court proceedings or arbitral proceedings;
- the enforcement of a security over immovable property or movable property used for a trade, business or profession;
- an application for a meeting of creditors to be summoned to approve a compromise or arrangement;
- an application for a judicial management order;
- an application for winding up or bankruptcy;
- the appointment of a receiver or manager over property or undertaking;
- the commencement or levying of execution, distress or other legal process against property, except with the leave of court;
- the repossession of goods used for the purpose of a trade, business or profession under certain agreements;
- the termination of a lease or licence of immovable property for non-payment of rent or other moneys;
- the exercise of a right of re-entry or forfeiture under a lease or licence of immovable property;
- the enforcement of a judgment, award or determination by a court, an arbitral tribunal under the Arbitration Act, or an adjudicator under the SOP Act; and
- any other prescribed action.

It is an offence to take any such action above without reasonable excuse. If any of the above action is taken without reasonable excuse, the party will be liable on conviction to a fine not exceeding SGD 1,000. In addition, any proceedings commenced must be dismissed and any other action taken that is prohibited is void or invalid. Given these provisions, parties will need to re-assess the performance of further contractual obligations and the exercise of their contractual rights. For instance, parties should manage their exposure and give thought to self-help remedies such as set-off. Again, we will be pleased to advise further, if needed.