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The impact of the covid-19 (temporary measures) act on commercial litigation and insolvency matters

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On 7 April 2020, the Singapore government passed a wide-ranging bill (the “**Act**”) providing temporary relief for parties who are unable to fulfil contractual obligations due to the Covid19 crisis.

The Act covers certain contractual obligations to be performed for the period 1 February 2020 to 1 August 2020 (*both dates inclusive*) (“**Relief Period**”).

This update sets out the legal implications for commercial litigation and insolvency matters.

A. COMMERCIAL LITIGATION

Under the Act, if a contracting party to a Scheduled Contract (“**A**”) is unable to perform a contractual obligation as a result of a COVID-19 event, and has served a **Notification for Relief** on the other contracting party (“**B**”), B may not take any of the following actions set out below during the Relief Period:

- Enforcing a judgment, arbitral award or SOPA determination against A or A’s guarantor or surety
- Commencing or continuing an action in court against A or A’s guarantor or surety
- Commencing or continuing arbitral proceedings under the Arbitration Act against A or A’s surety
- Enforcing any security over any immovable property
- Enforcing any security over any moveable property used for the purpose of a trade, business or profession
- Making a Section 210(1) Companies Act application to call for a creditors’ meeting to approve a scheme of arrangement in relation to A or A’s surety
- Applying for a judicial management order in relation to A or A’s surety
- Making a bankruptcy application against A or A’s surety
- Appointing a receiver or manager over any property or undertaking of A or A’s guarantor or surety
- Commencing enforcement proceedings against any property of A or A’s guarantor or surety, except with leave of court

- Re-possessing of goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, where the goods are used for the purpose of a trade, business or profession
- Terminating a Scheduled Contract where the subject inability is non-payment of rent or other moneys
- Exercising the right of re-entry or forfeiture under a Scheduled Contract

The Scheduled Contracts covered under the Act are the following types of contracts:

- Loan facilities which are wholly or partially secured against commercial or industrial immoveable property in Singapore
- Loan facilities which are wholly or partially secured against any plant, machinery or fixed asset located in Singapore used for manufacturing, production or other business purposes
- Performance bonds granted pursuant to a construction or supply contract
- Hire-purchase agreements or conditional sales agreements, where the good is either (i) a commercial vehicle or (ii) a plant, machinery or fixed asset located in Singapore used for manufacturing, production or other business purposes
- Event contracts
- Tourism-related contracts
- Construction and supply contracts
- Lease or licences of non-residential immoveable property

All proceedings commenced in contravention of the rules set out below shall be dismissed or be rendered void / invalid **provided** that a copy of the **Notification for Relief** has been lodged with the Court.

It is therefore critical that contracting parties who are concerned about the impact of COVID-19 immediately consider whether they should serve a Notification for Relief on their counterparts, as this may give them possible shelter from unwarranted legal actions.

B. INSOLVENCY

In addition to the protections above granted to persons and companies (which have served a Notification of Relief) from insolvency proceedings and enforcement against security and assets, the Act also provides persons and companies a further measure of relief against potential insolvency during this difficult period.

The Act provides that a financially distressed individual or company shall not be treated as having “*no reasonable ground of expectation of being able to pay a debt*” under the relevant laws if the debt is incurred:

- (i) in the ordinary course of business,
- (ii) during the Relief Period, and
- (iii) before the making of an application for voluntary arrangement or bankruptcy / appointment of judicial manager or liquidator (as the case may be).

The Act also provides for the temporary increase in monetary thresholds and extension of time limits for bankruptcy and insolvency matters.

For individuals:

- The monetary threshold for personal bankruptcy applications will be raised from \$15,000 to \$60,000
- The time period to satisfy a statutory demand issued during the Relief Period will be extended from 21 days to 6 months
- The monetary threshold for the Debt Repayment Scheme will be increased from \$100,000 to \$250,000

For companies:

- The monetary threshold for issuing a statutory demand will be raised from \$10,000 to \$100,000
- The time period to satisfy a statutory demand issued during the Relief Period will be extended from 21 days to 6 months
- The statutory period to respond to statutory demands from creditors will be temporarily lengthened from 21 days to 6 months.

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