

CORONAVIRUS: THE "LEGAL CIRCUIT BREAKER" – SINGAPORE AMENDS LEGISLATION TO PROVIDE ADDITIONAL RELIEF FOR SMES

The COVID-19 (Temporary Measures) Act 2020 (the **COTMA**), Singapore's new legislation to give breathing space to certain businesses and individuals suffering financial distress because of the effects of COVID-19 (covered in our previous briefing [here](#)), has been amended to provide additional protection to small and medium enterprises (**SMEs**).

On 5 June 2020, following a consultation with relevant stakeholders, Parliament passed amendments which include a rental relief framework for eligible SMEs and a cap on late interest charges for specific contracts. The amendments demonstrate the Singapore Government's continued approach of actively legislating to mitigate the economic damage caused by the pandemic, which includes re-writing contractual obligations in certain limited circumstances.

ADDITIONAL RENTAL PROTECTION FOR SMES

The new rental relief framework applies to non-residential leases for SME tenants (those with less than S\$100 million in annual turnover) (i) entered into or renewed before 25 March 2020; and (ii) entered into before 25 March 2020 and renewed on or after 25 March 2020.

While the specific calculations in respect of rental relief are slightly complex, in essence the amendments aim to provide for a mandated co-sharing of rental obligations between the Government, landlords and tenants. In Parliament, the Minister of Law stressed that the premise of fair sharing of rental obligations among landlords, tenants and the Government underpinned the latest round of amendments to COTMA.

While, for the most part, the reliefs under the first iteration of COTMA were intended to provide *temporary* relief, the amendments are significant in that, where applicable, they provide for a *permanent* waiver of certain rent obligations.

Key amendments to the COTMA

- The COTMA now features a new rental relief framework for eligible SMEs, providing mandated co-sharing of rental obligations between the Government, landlords and tenants.
- Tenants unable to vacate business premises due to the COVID-19 pandemic may obtain relief for liability arising from failure to vacate the property.
- Parties may now be represented by counsel in assessor dispute proceedings (where the assessor permits).
- A cap on late interest charges accruing as a result of the COVID-19 temporary moratorium has been introduced.

Through a combination of cash grants and tax rebates, the Government will provide relief of approximately two months of rent for qualifying commercial properties, and approximately one month of rent for industrial and office properties.

Landlords of SME tenants who have seen a drop of 35% or more in their average monthly revenues from April to May 2020 (as compared to April-May 2019) will be obliged to give an additional two months' waiver of rent for qualifying commercial properties, and an additional one month waiver of rent for industrial and office properties (subject to a landlord financial hardship assessment). The mandatory waivers apply automatically down the chain (if any) of landlords and sub-tenants.

There is also a moratorium on rent recovery preventing landlords from, amongst other things:

- (i) commencing an action in court or arbitration under the Arbitration Act (Cap.10) against a tenant or his/her guarantor;
- (ii) commencing an application for a scheme of arrangement, judicial management order, winding up or bankruptcy against a tenant or his/her guarantor;
- (iii) commencing or levying of execution, distress and other legal process against any property of the tenant or his/her guarantor;
- (iv) terminating the lease agreement; and
- (v) exercising a right of re-entry or forfeiture under the lease agreement, or other similar right.

Where a tenant is unable to vacate business premises, it may serve a notification for relief on the landlord to relieve him/her from liability for failing to vacate the property. The tenant will need to meet the following criteria:

- (i) the inability must be caused by COVID-19;
- (ii) the inability must occur after the termination or expiry of the lease or license and before the end of the prescribed period (i.e. before 19 October 2020).

Owing to the complexities of the rental relief mechanism, the amendments to the COTMA provide for the appointment of a panel of "rental relief assessors" (separate from the main panel of assessors) who will determine applications in relation to a tenant's entitlement to rental relief.

While the new measures are intended to establish a "baseline" position, the Ministry of Law encourages landlords and tenants to continue to try and work out mutually agreeable arrangements that best address their specific circumstances without necessarily resorting to the formal assessment process.

POSSIBILITY OF LEGAL COUNSEL BEFORE ASSESSORS

Under the amendments, the assessors appointed by the Ministry of Law to determine disputes under COTMA, are given certain additional powers. In particular, they may now make further determinations to (i) discharge certain contracts and release parties from their obligations; (ii) require a deposit to be offset against money owed under the contract; and (iii) require a party to pay

reasonable costs incurred by another in performing the contract. Assessors may also now make subsequent determinations following an initial determination.

Further – and importantly, given the complexity of some of the issues which may arise out of COTMA – parties may now be represented by counsel in disputes proceedings before an assessor (if permitted by the assessor) despite a blanket prohibition against this in the initial legislation.

CAP ON LATE INTEREST CHARGES

While under the original COTMA, businesses and individuals who are unable to meet certain payment obligations because of COVID-19 were granted a temporary moratorium from enforcement actions during the prescribed period, it had been commented that default late payment and interest charges may continue to run - since contractual obligations were merely suspended, rather than permanently abrogated.

Given the substantial impact such late payment and interest charges were likely to cause businesses, Parliament has seen fit to legislate a cap on late payment interest and charges accruing from debts not paid due to the temporary moratorium up to a certain prescribed amount. Further, creditors may not terminate a contract in respect of a debtor's inability to pay the excess late interest charges.

ENHANCED RELIEF PROVISIONS

There is an amendment to the qualifying criteria under section 5 of the COTMA to provide that (in addition to the other qualifying criteria) relief measures will be available to a party to a scheduled contract who is "*or will be*" unable to perform its contractual obligations on account of COVID-19.

This amendment contemplates that a party may serve a notification for relief in respect of future (as well as present) obligations which it anticipates it will be unable to fulfil.

CONCLUSION

The amendments to the COTMA are consistent with the major policy objective underlying the Act to avoid the unnecessary collapse of otherwise viable SMEs and businesses in targeted sectors. The COTMA seeks to do this by intervening with parties' contracts (notably, under the amendments, in respect of non-residential leases) and spreading the financial hardship across various stakeholders. While this represents an incursion into the general principle of sanctity of contract, the Law Minister has previously commented that in such unprecedented times, considerations of equity must take precedence.

Many other jurisdictions have introduced emergency legislative protections in the wake of the COVID-19 pandemic, most frequently by increasing insolvency thresholds or by introducing a temporary ban on insolvency filings. For the time being, Singapore's targeted legislative intervention with contract law to provide a temporary and in some cases permanent waiver of obligations remains relatively unique.

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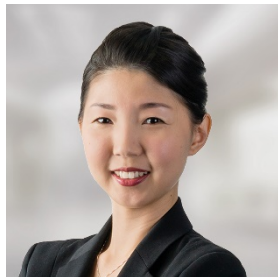
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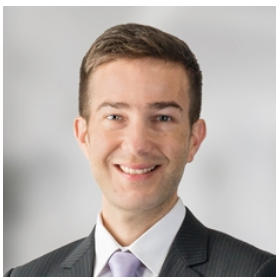
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