

Singapore Passes the COVID-19 (Temporary Measures) Act 2020 to Support Businesses and Enterprises

The COVID-19 (Temporary Measures) Act 2020 (**C-19 TM Act**) was passed by the Singapore Parliament on 7 April 2020. The moratoria provisions have been crafted to apply to a relatively narrow set of transactions. Taking action in breach of the moratoria provisions is, however, a criminal offence. This update looks at the moratoria provisions as they apply to loan facilities, leases and construction and supply contracts. It also considers the relief provided to directors and officers of corporate entities, as well as the provisions on virtual meetings.

The C-19 TM Act also deals with the following other matters which are beyond the scope of this update:

- Moratoria in respect of event contracts and tourism-related contracts;
- The taking of evidence by video conferencing by the Singapore courts;
- The increase of financial thresholds and periods for failure to pay a statutory demand with respect to taking out insolvency proceedings; and
- Issuance of control orders to prevent the spread of COVID-19.

Provisions on Virtual Meetings

The COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 was issued on 13 April 2020 and has been given retrospective effect as from 27 March 2020. It provides for electronic meetings to be held by companies, variable capital companies, business trusts, unit trusts and debenture holders. Under the C-19 TM Act, a meeting held in accordance with that order will be deemed to have been validly held. The meeting must be one held during the period that the COVID-19 (Temporary Measures) (Control Order) Regulation 2020 remains in force (ie, at present, from 7 April 2020 to 4 May 2020). It also validates a virtual meeting held in the 30 days after that regulation ceases if the notice to the meeting was sent out during the in-force period of that regulation, this note will only deal with the requirements for companies. The requirements for the other types of entities are substantially similar.

Regardless of what has been set out in its constitution, a company may hold a general meeting electronically provided it meets the following requirements:

- Members must be given access to both an audio broadcast and an audio-visual broadcast. The access may be confined to just listening and observing. Accordingly, access need not include the ability to speak or ask questions at the same time as the broadcast.
- The means by which a company provides a member the right to be heard is not restricted to any specific method. However, the minimum that a company must provide is for members, before the meeting, to send to the chairman of the meeting, by post or e-mail, the matters which the member wishes to raise at the meeting. The company must respond to each such matter at or before the meeting by electronic means. This is provided the matter is substantial and relevant and was sent within a reasonable time before the meeting.
- A quorum may be formed by two members of the company electronically present. Members are electronically present if:
 - o They attend the meeting by observing and listening to the audio or audio-visual broadcast;
 - o Their electronic attendance is verified by the share registrar of the company; and
 - o They are acknowledged by the chairman of the meeting by electronic means as being present.
- Members may only vote by appointing the chairman of the meeting as the member's proxy. The instrument of appointment may be deposited with the company by post or by e-mail to an e-mail address stated in the notice of meeting.
- Notice of the meeting may be sent by electronic means, including by e-mail. The notice must describe how the meeting can be electronically accessed, how the member may appoint the chairman as his proxy to vote, and how the member may send substantial and relevant matters that the member wishes to raise to the chairman.

- Documents that are to be laid or produced at the meeting (eg, the audited accounts), may be laid or produced by being e-mailed together with the notice of the meeting, or published at an online location or at the company's website. The location of where the document may be obtained must be set out in the notice of the meeting.

For listed companies, the following also apply:

- The notice of a general meeting (including an adjourned or postponed meeting) may be published on SGXNET and the website of the listed company (if available) instead of being sent by e-mail.
- The company must publish the minutes of the meeting on SGXNET and the website of the listed company (if available) within one month after the date of the meeting.

The Singapore Exchange Regulation (**SGX RegCo**) and the Accounting and Corporate Regulatory Authority (**ACRA**) have both issued automatic extensions of 60 days for all listed and non-listed companies whose annual general meetings are due during the period 16 April 2020 to 31 July 2020. SGX listed companies will need to notify SGX RegCo by email and make a market announcement but no approval is required.

Provisions on Relief for Directors and Officers of Corporate Entities

The provision on relief for directors and officers of corporate entities is narrowly crafted. It is directed at the specific offence of an officer knowingly being a party to the contracting of a debt where he had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time of the company being able to pay the debt (section 339(3) of the Companies Act). The provision on relief simply provides that the incurring of a debt during the prescribed period (ie, the period of six months from the commencement of the C-19 TM Act) is not to be treated as falling within the offence if it was in the ordinary course of business and before the appointment of a judicial manager or liquidator.

For other corporate entities such as limited liability partnerships, the C-19 TM Act provides equivalent relief in relation to their relevant legislation.

Note that the duties of directors of companies shift when a company is insolvent. In these circumstances, case law has established that the best interests of the company is considered from the perspective of its creditors. This issue has not been dealt with in the C-19 TM Act. It would presumably be up to the courts to apply the test of "best interests of the company" in a modified fashion in this instance as the continued incurring of debts would not ordinarily be considered in the best interests of a company's creditors.

Directors and officers should however ensure that they document their decisions to make it clear that any decisions taken to incur further debt were as a result of a COVID-19 event and taken to ensure the continued operations of the company as a result of this event, bearing in mind as well that it would be in the best interests of the creditors for the company to continue as a going concern after the end of the prescribed period.

Provisions on Moratoria over Loan Facilities

The loan facilities that are covered by the moratoria provisions are a very narrow category of loan facilities that meet all of the following criteria:

- They only apply to loan facilities that are wholly or partially secured by security against commercial or industrial property located in Singapore, or against any plant, machinery or fixed assets located in Singapore.
- The facility must have been entered into before 25 March 2020.
- The borrower must be incorporated, formed or established in Singapore and is carrying on business here. It must also be 30% owned by Singapore citizens or permanent residents. It must have a group turnover of less than SGD100 million.

- The Ministry of Law has stated in the FAQs on its website that the moratoria only apply to contracts that are governed by Singapore law. This has not been specified in the C-19 TM Act. However, the Minister for Law may prescribe contracts to which the C-19 TM Act will not apply and presumably this will be prescribed shortly.

The moratorium is against the taking of court or arbitral proceedings, enforcement of security, appointment of a receiver, application for judicial management or scheme of arrangement (among others). It includes taking any such action against the guarantor or surety of the loan. The C-19 TM Act does not limit the taking of action against a guarantor or surety of a borrower to a guarantor or surety that is an SME (ie, one that meets the requirements set out above for a borrower).

The taking of any such action is a criminal offence and is subject to a maximum fine of SGD1,000.

However, a lender is not prohibited from terminating the loan facility or exercising draw stop rights as the right to take any other action, including the exercise of contractual rights for force majeure and remedies under the Frustrated Contracts Act, has been specifically preserved.

Where the loan facility is secured against a range of assets, only one or some of which are covered under the C-19 TM Act, the moratorium only applies to those assets covered by the C-19 TM Act and that part of the facility that is secured by such assets.

For the moratorium to apply, the borrower must issue a notification for relief. The notification for relief must relate to an obligation that is to be performed on or after 1 February 2020. The borrower's inability to perform the obligation must be to a material extent caused by a COVID-19 event (this is defined as being the COVID-19 epidemic or any government measures in any country implemented due to the COVID-19 epidemic). If the lender and borrower disagree that the cause of the inability was to a material extent caused by a COVID-19 event, they must bring their dispute to an assessor. The Ministry of Law will set up a panel of assessors. The decision of the assessor will be final and binding. No lawyers will be allowed to represent the parties.

Provisions on Leases

Moratoria provisions

The leases that are covered by the moratoria provisions are leases or licences of non residential immovable property. This applies to all such leases and licences and not simply those with SMEs. In addition to the moratoria on the taking of actions etc. as applicable to loan facilities, the C-19 TM Act also prohibits:

- the termination of such leases or licences due to the non-payment of rent or other monies; and
- the exercise of a right of re-entry or forfeiture under such a lease or licence.

Any such termination or exercise is invalid. As is the case with the moratoria provisions on loans, the taking of such action is a criminal offence. The regime of assessors also applies.

Remission of property tax

Owners of non-residential properties are required under the C-19 TM Act to pass on the remission of property tax that they received (amounting to about one month's rent) to their tenants. A failure to do so by the prescribed date will be an offence rendering them liable to a fine of up to SGD5,000. They must not impose conditions on the tenant for passing on the rebate and any conditions so imposed will be void. A landlord and tenant may apply to the Valuation Review Panel to hear any disputes as to this matter.

Moratoria Provisions over Construction and Supply Contracts

The moratoria provisions only cover construction contracts for construction taking place in Singapore and supply contracts for construction taking place in Singapore (both "construction contract" and "supply contract" are defined with reference to the Building and Construction Industry Security of Payment Act). Performance bonds for such contracts are also covered by the moratoria provisions.

The moratorium is against the taking of court or arbitral proceedings, enforcement of security, appointment of a receiver, application for judicial management or scheme of arrangement (among others). In addition, the following also apply:

- Where a performance bond has been given, the beneficiary of the bond may not call on the bond until seven days before its expiry date. At any time prior to that date seven days before the bond expires, the obligor may apply to the issuer of the bond to extend the term of the bond. Notice of the application must also be given to the beneficiary of the bond. The term of the bond will be extended to a date seven days after the end of the prescribed period.
- It will be a defence to a subsequent claim for breach of contract that any failure to perform under the construction contract or supply contract from 1 February 2020 to the end of the prescribed period was to a material extent caused by a COVID-19 event. No notification for relief is required for this to be in effect.
- Any failure to perform as from 1 February 2020 to the end of the prescribed period is to be disregarded for the purposes of determining the period specified in the contract for calculating liquidated damages. This also applies automatically and no notification for relief is required to be made for this to be in effect.

As with the moratoria provisions for loans, the taking of any action contrary to the moratoria provisions is a criminal offence. The regime of assessors also applies.

Contact information



Yin Mei Lock
Partner, Singapore
+65 6671 6188
yinmei.lock@allenoverly.com



Gautam Narasimhan
Partner, Singapore
+65 6671 6048
gautam.narasimhan@allenoverly.com



Prakash Segaran
Partner, Singapore
+65 6671 6060
prakash.segaran@allenoverly.com



Aloysius Tan
Partner, Singapore
+65 6671 6016
aloyusius.tan@allenoverly.com



Shuhui Kwok
Counsel, Singapore
+65 6671 6065
shuhui.kwok@allenoverly.com



Kai Hsien Yang
Counsel, Singapore
+65 6671 6021
kaihhsien.yang@allenoverly.com



Wee Teck Lim
Senior Professional
Support Lawyer, Singapore
+65 6671 6142
weeteck.lim@allenoverly.com

If you no longer wish to receive our marketing communications, please contact epublications@allenoverly.com.
For information on how we use your personal information, please see our [privacy policy](#) on allenoverly.com.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales. The term **partner** is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.
© Allen & Overy LLP 2019. This document is for general guidance only and does not constitute definitive advice.

UK