

Understanding the impact of the COVID-19 Act 2020 on your contractual obligation to pay (Part 2)

Section 7 of the COVID-19 Act provides that the inability of any party or parties to perform *any contractual obligation* shall not give rise to the other party or parties exercising his or their rights under the contract. Its application is however restricted to the following conditions:

- (a) such contractual obligation is to be performed on or after 18 March 2020, but before 31 December 2020¹;
- (b) the contract falls under the categories of contracts specified in the Schedule to Part II (hereinafter referred to as the “**Scheduled Contracts**”); and
- (c) such inability to perform is a result of the measures prescribed, made or taken under the Prevention and Control of Infectious Diseases Act 1988 (“**PCID Act**”) to control or prevent the spread of COVID-19.

Is the language of section 7 wide enough to extend to obligations to pay under the Scheduled Contracts?

Any contractual obligation

The term “any contractual obligation” is wide enough to extend to an obligation to make payment under the Scheduled Contract.

There could be two reasons section 7 is worded widely:

- (a) the wide range of contracts that the legislative seeks to extend its protection;
- (b) the intent of the Act, which is to assist those being affected by the measures in controlling or preventing the spread of COVID-19.

Due to the measures prescribed, made or taken under the PCID Act to control or prevent the spread of COVID-19

Section 7 only applies if such inability to perform is a result of the measures prescribed, made or taken under the PCID Act to control or prevent the spread of COVID-19.

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What if a contracting party claims to be unable to pay due to financial hardship caused by the measures taken under the PCID Act? Does section 7 apply?

Yea

The measures to curb COVID-19 include imposing MCO, EMCO and CMCO. These measures have an impact on the businesses and have caused cash flow issues. Thus, it is arguable that the inability to pay is caused by such measures, and section 7 applies.

Although financial hardship is often not recognised as a force majeure event or a ground of the common law principle of frustration, different approach should be taken in interpreting the COVID-19 Act which is a piece of social legislation that aims to afford legal shield on contracts and give a lifeline to the affected persons.

This interpretation of section 7 is consistent with the other provisions of the COVID-19 Act which also provide temporary relief for a defaulting party:

- (a) section 23- owner shall not take possession of goods comprised in a hire-purchase agreement for any default of payment of instalment during the period from 1 April 2020 to 30 September 2020;
- (b) section 26- credit facility provider shall not commence any legal proceedings to recover the total outstanding amount payable by the purchaser under the credit sale agreement, provided that:
 - the credit sale agreement was entered into before 18 March 2020; and
 - the purchaser has no overdue instalments before 18 March 2020;
- (c) section 30- a warrant of distress shall not include the distress for the arrears of rent for the period from 18 March 2020 to 31 August 2020;
- (d) section 34- the developer shall not impose any late payment charges in respect of such unpaid instalment on the purchaser if the purchaser fails to pay any instalment for the period from 18 March 2020 to 31 August 2020 due to the measures prescribed, made or taken under the PCID Act to prevent the spread of COVID-19.

Nay

It must however also be borne in mind the importance of striking a balance between the interests of the creditors and that of the debtors.

The interpretations of section 7 above might be abused, and the creditors could not expect any payment under the Scheduled Contracts until the end of the year!

Unlike section 5 of the Singapore COVID-19 (Temporary Measures) Act 2020, section 7 does not have the following safeguards to protect the interests of the creditors:

- (a) the requirement that the inability is *to a material extent* caused by COVID-19 event;
- (b) formal notification for relief;
- (c) the relief could be ended by withdrawal of the notification of relief before the expiry of the prescribed period;
- (d) the right to apply to the registrar to appoint an assessor to determine if the case in question is not one to which the provision applies.

Therefore, it is foreseeable that such a wide language in section 7 would open up to arguments. The judicial approach in the interpretation of this section remains to be seen.

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