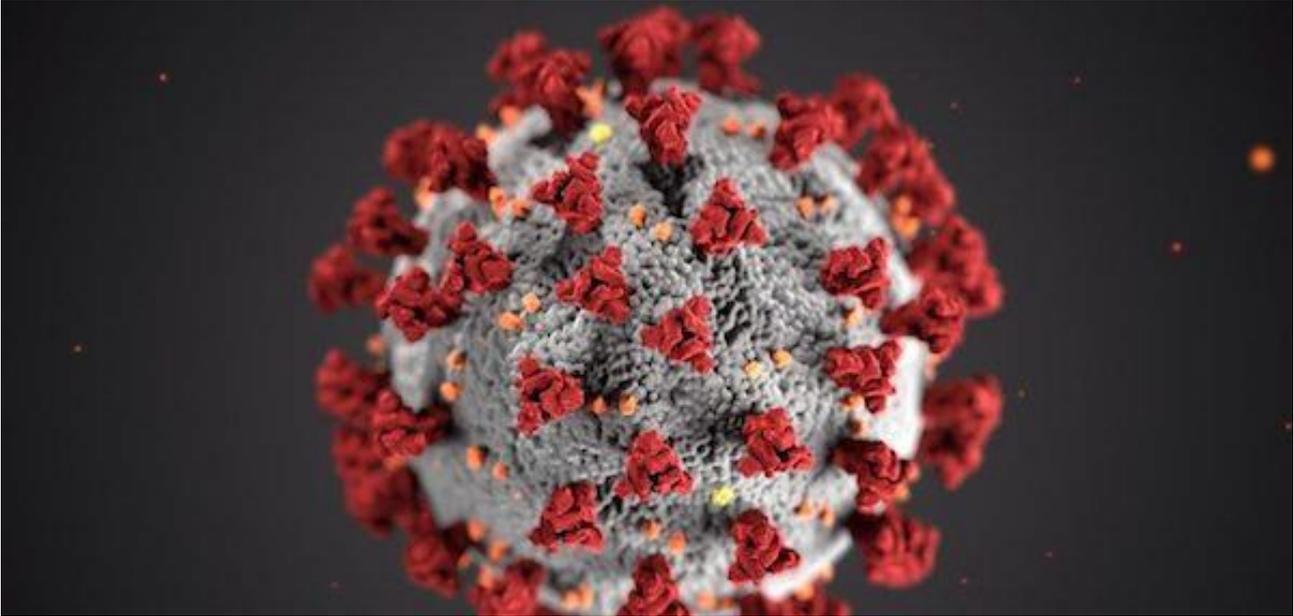


MORE ROOM TO BREATHE: SOME OBSERVATIONS ON THE NEWLY INTRODUCED COVID-19 (TEMPORARY MEASURES) ACT



Introduction

The advent and spread of COVID-19 have caused severe cashflow difficulties for businesses within and without Singapore. Cash and liquidity are in scarce supply, and businesses find themselves either gasping to keep afloat, or struggling to be paid by their debtors. In an effort to address the financial difficulties choking businesses in Singapore, the Singapore government has introduced various new measures in the new **Covid-19 (Temporary Measures) Act 2020** (the “Act”), which was passed on 7 April 2020.¹ While the prevalent issue on everyone’s minds is the control order and its restrictions on our movements, the Act also includes several important financial and business-related provisions.

The new measures under the Act

If you are a business owner, these are a few things you need to know about the new Act and its impact on your business:

1. **First**, the Act provides **temporary relief measures** for certain categories of “Scheduled Contracts”, by effectively suspending strict compliance with contractual obligations. Presently, a “Scheduled Contract” includes:²
 - (a) a **contract for the grant of a loan facility by a bank or finance company**, where such facility is secured either, by any commercial or industrial immovable

property located in Singapore, or by plant, machinery or fixed assets located in Singapore which are used for business purposes;

- (b) a **performance bond or equivalent** that is granted pursuant to a **construction contract** or a **supply contract** (e.g. contract for the supply of materials);
- (c) a **hire purchase agreement** or **conditional sales agreement** for plant, machinery or fixed assets located in Singapore which are used for business purposes, or for commercial vehicles;
- (d) an **events contract**, or a **tourism-related contract**;
- (e) a **construction contract or supply contract**; and
- (f) a **lease or licence of non-residential immovable property**.

If you are a business owner who is party to a Scheduled Contract, and you or your company cannot perform the contract because of the COVID-19 pandemic, you may be entitled to invoke relief against the enforcement of contractual obligations against you! Notably, creditors would be prevented from suing you or your business, enforcing against any security, or applying for any insolvency actions against you or your business (i.e. schemes of arrangement, judicial management or winding up).³

2. **Second**, and in addition to the temporary relief measures, the Act also provides **significant reprieve from actions in bankruptcy (for personal debtors) and winding up (for companies)**, by increasing the monetary thresholds and timelines relating to bankruptcy and winding up applications for the period that the new Act is in force:

- (a) Bankruptcy applications can now only be brought if the debt is more than S\$60,000 (from the previous threshold of S\$15,000), and a debtor need only satisfy a statutory demand within 6 months (instead of the previous 21 days).⁴
- (b) Similarly, a statutory demand issued against a company (with a view towards winding up proceedings) is only valid if the debt is more than S\$100,000 (from the previous threshold of S\$10,000), and a debtor need only satisfy the statutory demand within 6 months (instead of the previous 3 weeks).⁵

The protection of these enhanced thresholds and timelines extends even to persons or businesses who are not parties to a "Scheduled Contract", and even though the financial difficulties were caused by events or reasons other than the COVID-19 pandemic. However, these protections would not apply if a statutory demand or bankruptcy application has been issued against you before the new measures come into force (see point 3 below) – so you still need to keep a lookout for creditor actions and take steps to protect yourself and your business in the meantime!⁶

3. **Third**, these new measures **have not come into force yet, but are expected to in mid-April**.⁷ Once they commence, they are expected to last for 6 months from the time that they come into force, and may be further extended.

The key takeaway to all these is that these new temporary measures can give you and your business meaningful breathing room against major actions that a creditor can take against you. Importantly, because certain enforcement actions may be put on hold while the Act is in force, it is possible to leverage on this vital opportunity to engage in discussions with creditors with a view to restructuring your or your business's debt obligations. It is worth ventilating that, with the widespread financial impact of the COVID-19 pandemic, it may be more valuable for creditors to

take a longer-term view and give their debtors a fighting chance.



The existing legal regime also provides viable options

But what if your creditor is unwilling to compromise, or an amicable restructuring of the debts cannot be reached before the new measures under the Act expire? In such event, there are helpful options under the existing legal framework which may avail you or your business.

For example, section 211B of the Companies Act was introduced in 2017 to give statutory protection to distressed companies in the form of a moratorium restraining proceedings.⁸ This gives a company crucial breathing space to reorganise its finances and propose a restructuring plan to its creditors.

The requirements of a section 211B moratorium are not onerous. The distressed company will essentially need to show the Court that:

- (a) it **has, or intends to prepare, a restructuring plan** to be proposed to its creditors;⁹ and
- (b) there is **support from the creditors** for either the restructuring plan (if one has already been proposed), or for the moratorium (if a restructuring plan has not been proposed).¹⁰

The making of the application automatically gives rise to a 30-day moratorium.¹¹ After the Court hears the application, the moratorium may be extended by order of Court.

In our experience, the Court has granted moratoriums of between 4 and 6 months. This is typically long enough for the distressed company to put together (with the aid of legal and financial advisers) a scheme of arrangement and compromise to be proposed to its creditors.

Apart from a section 211B moratorium, a distressed company may also apply to appoint a judicial manager (who is typically an independent professional) to manage the company for a period of 6 months.¹² A judicial manager will come into a

distressed company with a view towards breathing new life and rehabilitating it, or alternatively to see if a more advantageous realisation can be achieved for creditors than in winding up.

Conclusion

It is not an exaggeration to say that the COVID-19 pandemic has had a major deleterious effect on businesses within and without Singapore. If you are a business owner, or if you know someone who is one, the new Act may therefore provide much-needed breathing space through the temporary relief it affords. This is a valuable opening to engage in discussions with creditors and (if possible) reach an amicable outcome with creditors. Even if you are unable to avail yourself to the protections under the new measures, there are still options available under the existing legal regime that may assist you or your business.

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- ¹ Act 14 of 2020.
- ² Paragraph 1 of the Schedule, *COVID-19 (Temporary Measures) Act 2020 (Cap. 14 of 2020)*.
- ³ Sections 5, 6, and 7 of the *COVID-19 (Temporary Measures) Act 2020 (Cap. 14 of 2020)*.
- ⁴ Section 20 of the *COVID-19 (Temporary Measures) Act 2020 (Cap. 14 of 2020)*.
- ⁵ Section 22 of the *COVID-19 (Temporary Measures) Act 2020 (Cap. 14 of 2020)*.

- ⁶ Sections 26(3) and 26(4), and sections 26(17) of the *COVID-19 (Temporary Measures) Act 2020 (Cap. 14 of 2020)*.
- ⁷ <https://www.mlaw.gov.sg/covid19-relief/faq>.
- ⁸ Section 211B of the *Companies Act (Cap. 50)*.
- ⁹ Section 211(B)(2) of the *Companies Act (Cap. 50)*.
- ¹⁰ *Re IM Skaugen* [2019] 3 SLR 979
- ¹¹ Section 211B(8) read with section 211B(13) of the *Companies Act (Cap. 50)*.
- ¹² Part VIIIA of the *Companies Act (Cap. 50)*.