

**BRIEFING NOTE**

**Additional Reliefs for the Construction Sector – Expanding the Eligibility for Reliefs in the Latest Amendments to the COVID-19 (Temporary Measures) Act**

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**Introduction**

At the onset of the Circuit Breaker in Singapore, the COVID-19 (Temporary Measures) Act (“**C19TMA**”) was enacted to grant temporary reliefs for parties who are unable to perform their contractual obligations due to challenges brought about by the COVID-19 pandemic.

Initially, the C19TMA granted temporary reliefs to parties privy to construction or supply contracts. On 20 June 2020, the C19TMA was amended to include other contracts as well. We discuss below how the initial and additional reliefs will benefit the construction industry.

**Types of Construction Industry Contracts Covered by the C19TMA**

Previously, in the list of “prescribed contracts” where temporary relief may be sought under the C19TMA, there were only limited types of construction industry contracts. These are:

- construction contracts – being contracts to carry out construction work or supply services in relation to construction work;
- supply contracts – being contracts to supply goods to another party for the purpose of carrying out construction works; and
- performance bond granted to a construction or supply contract.

These “prescribed contracts” do not take into account other supporting players (such as those leasing heavy machinery or vehicle for construction activities), who may also be unable to fulfil their contractual obligations because of COVID-19. With the latest amendments, parties to leases of machinery and vehicle may now seek temporary relief for inability to perform.

**Prerequisites for Relying on the C19TMA**

Whilst the types of “prescribed contracts” have been expanded, the prerequisites for relying upon the C19TMA remain unchanged. To benefit from the temporary reliefs, the construction sector should ensure that:

- the inability to perform is caused by a COVID-19 event (for e.g.: (i) inability to complete construction work in time due to isolated or quarantined labourers; (ii) inability to supply material because of border closures or factory shutdowns in response to the

pandemic; and (iii) inability to lease machinery according to schedule because machinery is still leased to another party whose construction works are stalled due to the pandemic); and

- a notification for relief has been served on the relevant parties. In this regard, and given that legal advisors are permitted for C19TMA determinations, parties are encouraged to work with legal advisors to ensure that accurate and sufficient information are included in this notification.

### **Temporary Reliefs under the C19TMA**

Having fulfilled the prerequisites, the party who is unable to satisfy its contractual obligation(s) may enjoy/seek the following temporary reliefs:

- parties to performance bonds (granted to a construction or supply contract) may extend the expiry of the performance bond until after the “prescribed period” (which is, for the time being, 19 October 2020);
- counterparties to these performance bonds may not call on the performance bonds until just before the expiry of the (extended) performance bond;
- contractors or subcontractors who find themselves delayed in completing the project (or their portions of the project) would be granted temporary relief from liquidated damages during the “prescribed period” (meaning that liquidated damages will start to accrue only after 19 October 2020);
- suppliers of goods or services may rely on the difficulties caused by the pandemic as a defence against any breach of contract claims; and
- those in the construction sector who are parties to the “prescribed contracts” may rely on the C19TMA to delay arbitration or litigation proceedings (or enforcement of any arbitration award or litigation judgment) until after the “prescribed period”.

### **Concluding Remarks**

As the lull in the construction industry stretches throughout Phase 2 of Singapore’s post-lockdown period, parties in the construction industry will no doubt be looking at options for safeguarding their commercial positions. When properly triggered and relied upon, the C19TMA will no doubt provide some much-needed temporary relief to tide parties through this challenging period.

At Sharpe & Jagger LLC, we assist parties in the construction industry with dispute avoidance and dispute resolution assistance. We pride ourselves with providing top-quality and

international-standard advice at reasonable rates. For more information about how we may be of assistance to you, please do not hesitate to contact us.

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