



**Pro Bono
Centre**

Supported by RHT Rajan Menon Foundation



Pro Bono Centre
SMU School of Law
55 Armenian Street
Singapore 179943



6828 1951



probonocentre
@smu.edu.sg



<https://pbc.smu.edu.sg>

FAQ: Inability to Perform Contracts

Q: What is the “prescribed period”?

A: It is for 6 months from 20 April 2020 to 19 October 2020. This definition of the “prescribed period” is for applications for temporary relief from the inability to perform contracts, and when applying for an assessor’s determination. The Minister for Law has the power to extend the prescribed period of relief for up to a year.

Note that if the scheduled contract is an event contract, a tourism-related contract, a construction contract or a supply contract, the prescribed period when applying for an assessor’s determination is extended by two months, till 19 December 2020.

Q: What are the types of temporary relief available?

A: The other party to the contract may not take certain actions until the earliest following dates:

- a) expiry of the prescribed period (19 October 2020);
- b) the withdrawal of your notification of relief; or
- c) when the assessor makes a determination that temporary relief (from actions for the inability to perform your contract) is not applicable to your situation.

The other party to the contract may not take the following actions against you or your business (as a party to the scheduled contract):

- a) the commencement or continuation of an action in a court against you or your guarantor or surety;
- b) the commencement or continuation of arbitral proceedings under the Arbitration Act (Cap. 10) against

- you or your guarantor or surety;
- c) the enforcement of any security over any immovable property;
 - d) the enforcement of any security over any movable property used for the purpose of a trade, business or profession. Examples include plant and machinery;
 - e) the making of an application under section 210(1) of the Companies Act (Cap. 50) for a meeting of creditors to be summoned to approve a compromise or an arrangement in relation to you or your guarantor or surety;
 - f) the making of an application for a judicial management order in relation to you or your guarantor or surety;
 - g) the making of an application for the winding up of your business, guarantor or surety;
 - h) the making of a bankruptcy application against you or your guarantor or surety;
 - i) the appointment of a receiver or manager over any property or undertaking of you or your guarantor or surety;
 - j) the commencement or levying of execution, distress or other legal process against any property of you or your guarantor or surety, except with the leave of the court and subject to such terms as the court imposes;
 - k) the repossession of any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, being goods used for the purpose of a trade, business or profession. Examples include a motor car used as a private hire car, that is the subject of a hire-purchase agreement;
 - l) the termination of a scheduled contract (being a lease or licence of immovable property) where the inability is the non-payment of rent or other moneys;
 - m) the exercise of a right of re-entry or forfeiture under a scheduled contract (being a lease or licence of immovable property), or the exercise of any other right that has a similar outcome;
 - n) the enforcement against you or your guarantor or surety of a judgment of a court, an award made by an arbitral



Pro Bono Centre

Supported by RHT Rajan Menon Foundation

tribunal in arbitral proceedings conducted under the Arbitration Act, or a determination by an adjudicator under the Building and Construction Industry Security of Payment Act; and

- o) such other action as may be prescribed.

Note that for the other actions stated below, these actions do not apply to anything done before 13 May 2020.

The other actions prescribed include:

- a) the increase of any charges (however described) or interest rate for interest payable under a scheduled contract, except where —
 - i. the amount of the increase is specified in the contract or is to be calculated by reference to a formula or other matter (such as a reference rate) set out in the contract;
 - ii. the increase relates to a charge that is provided for or permitted in the contract, where such charge relates to recovery of expenses reasonably incurred by the other party to the contract (not being the party unable to perform the subject obligation) in the ordinary course of business; or
 - iii. the party who was unable to perform the subject obligation under the contract agrees to the increase;
- b) the imposition of any new charges under a scheduled contract, except with the agreement of the party who was unable to perform the subject obligation under the contract;
- c) requiring that any part of a security deposit given pursuant to a scheduled contract be replaced by the party who was unable to perform the subject obligation under the contract, except with the agreement of that party;
- d) the withholding or forfeiture of any part of the booking fee or other consideration paid for an option mentioned in paragraph 1(i) of the Schedule to the Covid-19 (Temporary Measures) Act 2020;



**Pro Bono
Centre**

Supported by RHT Rajan Menon Foundation

- e) the termination by the housing developer of an agreement mentioned in paragraph 1(j) of the Schedule to the Covid-19 (Temporary Measures) Act 2020.

Q: What must I do to apply for a notification of relief?

A: Fill in Form 1, within the prescribed period of 20 April 2020 to 19 October 2020. Form 1 can be found on the Ministry of Law website (<https://www.mlaw.gov.sg/covid19-relief/notification-for-relief>). Follow the instructions closely and include all the relevant information to ensure that your application is successful.

Q: What is an assessor?

A: An assessor determines if temporary relief (from actions which other parties may not take regarding the inability to perform your contract) applies to your case where there is a dispute between you and other parties to the contract.

The Registrar or an assessor will not be liable for anything done or omitted to be done when fulfilling his or her duties, if these actions are done in good faith and with reasonable care.

Q: How to apply for an assessor's determination?

A: Detailed instructions, including the relevant forms to be submitted, can be found at this website: <https://www.mlaw.gov.sg/covid19-relief/application-for-assessor>.

Note that an application by a party to a contract for an assessor's determination must be made to the Registrar within the prescribed period of 20 April 2020 to 19 October 2020 after the party has been served with the notification of relief. If the scheduled contract is an event contract, a tourism-related contract, a construction contract or a supply contract, the application period is extended by two months, that is from 20 April 2020 to 19 December 2020.

Q: What additional relief is provided for the inability to perform construction contracts or supply contracts?

A: Regardless of what is in the performance bond or equivalent given pursuant to the construction contract or supply contract, the other party to the contract may not make a call on the performance bond or equivalent at any time earlier than 7 days before:

- a) the date of expiry of the performance bond or equivalent as stated in the performance bond or equivalent; or
- b) where the term of the performance bond or equivalent is extended, the date of expiry of the performance bond or equivalent following such extension.

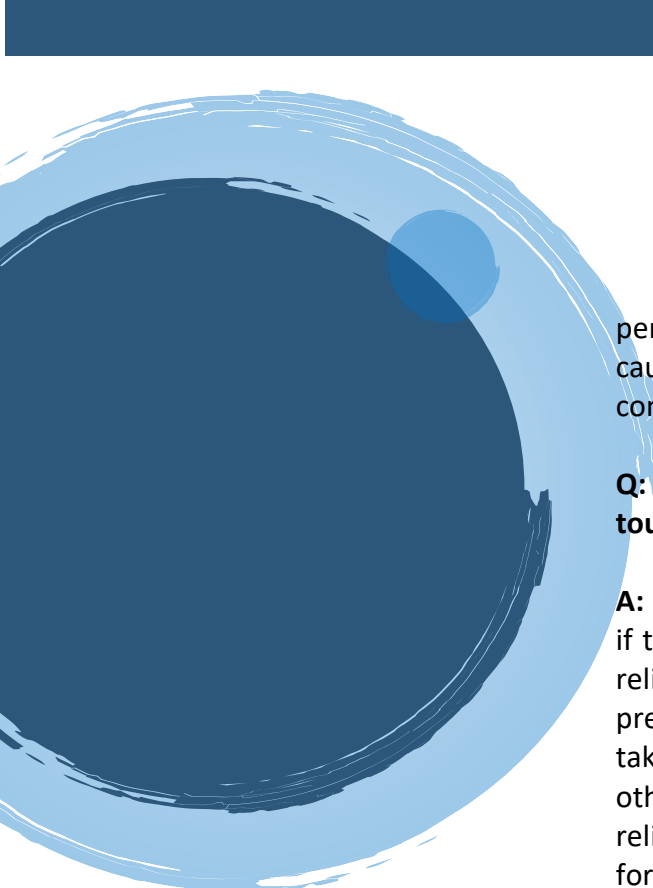
In the situation where a party to the scheduled contract:

- a) makes an application to the issuer of the performance bond or equivalent not less than 7 days before the date of expiry of the performance bond or equivalent, to extend the term of the performance bond or equivalent; and
- b) serves a notice of the application on the other party to the contract at the same time,

then the term of the performance bond or equivalent is extended to:

- a) a date that is 7 days after the end of the prescribed period, or
- b) such other date as may be agreed between both parties to the scheduled contract and the issuer, and that date or other date (as the case may be) is treated as the date of expiry of the performance bond or equivalent.

Regardless of anything in the contract, where the inability to supply goods or services in accordance with the terms of the contract was to a material extent caused by a COVID-19 event and such inability occurs on or after 1 February 2020 but before the expiry of the prescribed period, the fact that the inability to




perform the obligation in the contract was to a material extent caused by a COVID-19 event is a defence to a claim for a breach of contract in respect of the subject inability.

Q: What additional relief is provided for the inability to perform tourism-related contracts or event contracts?

A: Regardless of what is written in the contract or any other law, if the other party to the contract is served with a notification of relief, he may not at any time (whether during or after the prescribed period) forfeit any deposit (or part of any deposit) taken under the contract on the basis of the subject inability. The other party to the contract may only do so if the notification for relief is withdrawn or an assessor has made a determination that forfeiting the deposit or any part of the deposit is just and equitable in the circumstances of the case.

Regardless of any law or anything in the contract, if the other party to the contract has already forfeited any deposit (or part of any deposit) taken under the contract on the basis of the inability to perform a contract due to COVID-19, including at any time between 1 February 2020 and 7 April, the other party must on being served the notification for relief, as soon as practicable restore the deposit or part of the deposit, as if it had not been forfeited.

Regardless of anything in the contract, where the inability to perform the contract was to a material extent caused by a COVID-19 event and occurs on or after 1 February 2020 but before the expiry of the prescribed period, the fact that the inability to perform the obligation in the contract was to a material extent caused by a COVID-19 event is a defence to a claim for the payment of a cancellation fee under the contract.





**Pro Bono
Centre**

Supported by RHT Rajan Menon Foundation

Q: Where do I find the relevant forms mentioned in this FAQ and on the video?

A: The forms to be used are available from the Ministry of Law website at <http://www.mlaw.gov.sg/covid19-relief>.

Please refer to the sidebar of the website and click on the relevant sections to be directed to the form you are searching for.

The information contained in this FAQ is correct as of 21 May 2020

This FAQ was authored by the following students from the SMU School of Law as a service to the community:
Claire Goh, Jeanette Tang, Dou Han, Grace Lim, Joel Fun, Justin Tang, Mustafa Shakir, Slevin Chua

© 2020 School of Law, Singapore Management University

This FAQ is advisory in nature and does not constitute legal advice. The authors and SMU are not liable for any loss, claims, actions, costs, expenses or other damage (including but not limited to any direct, indirect, punitive, special or consequential damages, loss of income, revenue or profits) howsoever caused whether arising directly or indirectly from any decision made or action taken in reliance on the FAQ