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COVID-19 (TEMPORARY MEASURES) ACT 2020 (ACT 14 OF 2020)

COVID-19 (TEMPORARY MEASURES) (PART 8 RELIEF) REGULATIONS 2020

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In exercise of the powers conferred by section 39 of the COVID-19 (Temporary Measures) Act 2020, the Minister for Law makes the following Regulations:

Citation and commencement

1. These Regulations are the COVID-19 (Temporary Measures) (Part 8 Relief) Regulations 2020 and come into operation on 30 September 2020 at 12.01 a.m.

Definitions

2. In these Regulations, unless the context otherwise requires —
- “affected contract” means a contract mentioned in section 36 of the Act;
 - “application” means an application under section 37(1) of the Act for the Registrar to appoint an assessor to make a determination under section 38(1) of the Act;
 - “construction work” has the meaning given by section 3 of the SOPA;
 - “goods” means plant or materials for use in connection with the carrying out of construction work;
 - “goods rental contract” means a contract entered into before 25 March 2020 for the rental of goods;
 - “lease agreement” means a lease or licence of non-residential immovable property that is entered into or renewed before 25 March 2020, and includes one that is renewed on or after that date automatically or in exercise of a right of renewal in the lease or licence;
 - “lessee” —
 - (a) in relation to a lease agreement, means the person who is granted a lease of or a licence to occupy the non-residential immovable property; and
 - (b) in relation to a goods rental contract, means the person who rents goods under the contract from another person;
 - “lessor” —
 - (a) in relation to a lease agreement, means the person that grants the lease of or licence to occupy the non-residential immovable property; and
 - (b) in relation to a goods rental contract, means the person who rents goods under the contract to another person;

“Part 2 Regulations” means the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (G.N. No. S 303/2020);

“prescribed mode of service” has the meaning given by regulation 5 of the Part 2 Regulations;

“prescribed person” means a person prescribed under regulation 9;

“reduced rent period”, in relation to a lease agreement, means a period specified in the lease agreement —

(a) for the lessee to carry out renovation or fitting out works; and

(b) during which rent is not payable, or a reduced amount of rent is payable, by the lessee;

“respondent”, in relation to an application, is any person mentioned in section 37(2)(a) of the Act who is served with a copy of the application;

“SOPA” means the Building and Construction Industry Security of Payment Act (Cap. 30B);

“working day” means any day other than a Saturday, Sunday or public holiday.

Affected contracts

3.—(1) For the purposes of section 36(1)(a)(i) of the Act, the following are prescribed contracts:

(a) a lease agreement with the prescribed term mentioned in regulation 4(1)(a) or (b);

(b) a goods rental contract with the prescribed term mentioned in regulation 4(2)(a) or (b).

(2) For the purposes of section 36(1)(a) of the Act, the prescribed period is 1 February 2020 to 31 March 2021 (both dates inclusive).

(3) For the purposes of section 36(1)(a)(iii) of the Act, a prescribed contract is affected in the prescribed manner if —

- (a) for a lease agreement in relation to any non-residential immovable property, with the prescribed term mentioned in regulation 4(1)(a) — the lessor is or will be unable to deliver possession or allow use or occupation of the non-residential immovable property, in accordance with that prescribed term because of a delay or breach mentioned in section 36(1)(a)(iii) of the Act;
 - (b) for a lease agreement in relation to any non-residential immovable property, with the prescribed term mentioned in regulation 4(1)(b) — the lessee is or will be unable to carry out or complete renovation or fitting out works for the non-residential immovable property during the reduced rent period because of a delay or breach mentioned in section 36(1)(a)(iii) of the Act; or
 - (c) for a goods rental contract with the prescribed term mentioned in regulation 4(2)(a) or (b) — the lessee of the goods is or will be liable for rent for the continued possession of the goods because of a delay or breach mentioned in section 36(1)(a)(iii) of the Act.
- (4) For the purposes of section 36(1)(b) of the Act, it is a prescribed condition that the lessor or lessee (as the case may be) could not have reasonably avoided the inability or liability mentioned in paragraph (3)(a), (b) or (c), as the case may be.

Prescribed terms

4.—(1) For the purposes of section 37(1)(b)(ii) of the Act, the following are prescribed terms for a lease agreement in relation to any non-residential immovable property:

- (a) a term providing that the lessor is to deliver possession or allow use or occupation of the non-residential immovable property to the lessee by or on a date stated in the lease agreement;
- (b) a term providing for a reduced rent period.

(2) For the purposes of section 37(1)(b)(ii) of the Act, the following are prescribed terms for a goods rental contract in relation to any goods:

- (a) a term providing that the lessee must return the goods to the lessor by or on a date specified in the goods rental contract;
- (b) a term providing that the lessee must pay moneys to the lessor as rent for any period that the lessee has possession of the goods and the amount of the rent or the rate at which the rent is to be determined.

Prescribed assessment factors

5. For the purposes of section 38(2)(a) of the Act, the following are prescribed factors for a determination:

- (a) whether any party to the affected contract is entitled to obtain or has obtained relief from any other person, or under any other part of the Act or any other law, in respect of the affected contract;
- (b) the loss suffered or benefit obtained by any party to the affected contract in relation to the prescribed term;
- (c) the impact that any proposed variation of a prescribed term, or proposed release or discharge of a party to the affected contract from a prescribed term, may have on another contract that any party to the affected contract has with a third party.

Prescribed time to make application

6. For the purposes of section 37(1) of the Act, the prescribed time to make an application is any time before 31 May 2021.

Prescribed forms

7.—(1) For the purposes of section 37(1) of the Act, the prescribed form to make an application is Form A on the Internet website at <http://www.mlaw.gov.sg/covid19-relief>.

(2) The other forms to be used for the purposes of these Regulations are those set out on the Internet website at <http://www.mlaw.gov.sg/covid19-relief>, and any reference in these Regulations to a lettered form is a reference to the current version of the form bearing the corresponding letter that is displayed at that website.

(3) Every form to be served on any party or submitted to the Registrar or an assessor making a determination must —

- (a) contain such particulars;
 - (b) comply with such requirements; and
 - (c) be accompanied by such documents,
- as may be specified —
- (d) in the form;
 - (e) by the Registrar or the assessor; and
 - (f) in the Registrar's directives,

whichever is applicable.

Application

8.—(1) An application must contain the following information:

- (a) the name, address, telephone number, and email address (if any) of the person applying (called in these Regulations the applicant) under section 37 of the Act for an assessor to be appointed to make a determination;
- (b) the name and address, and (if known to the applicant) the telephone number and email address of each person mentioned in section 37(2)(a) and (b) of the Act;
- (c) the following information about the affected contract in question:
 - (i) the parties to and the subject matter of the affected contract;
 - (ii) the date the affected contract was entered into and the period in which the affected contract is in force;

- (iii) a brief explanation of how the affected contract was affected by a delay in the performance by a party to a construction (or construction-related) contract or supply (or supply-related) contract, or a breach of such contract;
 - (iv) the date the delay or breach referred to in sub-paragraph (iii) occurred;
 - (v) a brief explanation of how the delay or breach referred to in sub-paragraph (iii) is to a material extent caused by a COVID-19 event;
- (d) the details of the prescribed obligation, prescribed right or prescribed term of the affected contract;
- (e) the steps taken to mitigate the applicant's inability or liability mentioned in regulation 3(3);
- (f) any proposal by the applicant —
- (i) on the manner in which the prescribed obligation or prescribed right is to be performed or exercised other than in accordance with the terms of the affected contract;
 - (ii) on whether, and if so how, any prescribed term in the affected contract should be varied; or
 - (iii) for the release or discharge of the applicant from a prescribed term of the contract;
- (g) the following information on related proceedings, if any:
- (i) whether proceedings before a court have commenced against the applicant;
 - (ii) whether arbitral proceedings under the Arbitration Act (Cap. 10) have commenced against the applicant;
 - (iii) whether an adjudication application has been made under section 13(1) of SOPA for a claim against the applicant;

- (iv) whether a judgment, an arbitral award or a determination, in relation to proceedings or an application mentioned in sub-paragraph (i), (ii) or (iii), has been given or made;
- (h) a declaration by the applicant that all information provided in the application is true and correct.

(2) The application must be accompanied by a copy of the affected contract or (if the affected contract is not in writing) a description of how the affected contract was made and its terms.

(3) Where the applicant becomes aware of the taking of any action in breach of section 37A(1) of the Act before any court, arbitral tribunal, authorised nominating body or adjudicator as defined in SOPA (called in this paragraph a relevant tribunal), and the applicant wishes to lodge a copy of the application with the relevant tribunal, the applicant must do so by filing with or submitting to (as the case may be) the relevant tribunal a memorandum of the application in Form B that —

- (a) contains —
 - (i) information identifying the proceedings before the relevant tribunal; and
 - (ii) a declaration of service of the application on the persons mentioned in section 37(2)(a) and (b) of the Act, stating when such service was effected; and
- (b) is accompanied by a copy of the application.

Prescribed persons on whom application must be served

9. Every guarantor or surety for any party to an affected contract is a prescribed person for the purposes of section 37(2)(b) of the Act.

Acknowledgment of application and service

10.—(1) If the Registrar is satisfied that the application is in order, he or she must send to the applicant the following (called in this regulation matters from the Registrar):

- (a) an acknowledgment of receipt of the application;

(b) either the form of the response in Form F or the electronic location at which that form may be obtained.

(2) For the purposes of section 37(2) of the Act, the period for serving a copy of the application is 2 working days after the date the applicant receives the matters from the Registrar.

(3) A copy of the application and the matters from the Registrar must be served on the persons mentioned in section 37(2)(a) and (b) of the Act, in the manner specified in regulation 14(8) of the Part 2 Regulations which applies with the following modifications:

(a) a reference in that provision to the last email address of a person is to —

(i) an email address by which the applicant corresponds with that person on matters concerning the contract in question; or

(ii) if there is no such email address, an email address which that person represents to the applicant or to the public as the email address to which communications to that person may be sent;

(b) a reference in that provision to the last postal address of a person is to —

(i) the postal address designated by the person for the purpose of receiving documents or communications under Part 8 of the Act or these Regulations; or

(ii) if the person has not designated a postal address under sub-paragraph (i) — the person's ordinary address, within the meaning of regulation 2 of the Part 2 Regulations.

(4) The applicant must, within 2 working days after the service of the copy of the application and matters from the Registrar on the persons mentioned in section 37(2)(a) and (b) of the Act, submit to the Registrar a declaration in Form D of such service.

Response

11. A respondent may, no later than 5 working days after the respondent is served with the documents mentioned in regulation 10(3), submit to the Registrar a response to the application in Form F, and serve on the following by the prescribed mode of service a copy of the response:

- (a) the applicant;
- (b) every other respondent or prescribed person.

Withdrawal of application

12.—(1) An applicant may at any time withdraw the application by serving a notice of withdrawal in Form C on each respondent by the prescribed mode of service.

(2) The applicant must also serve the notice of withdrawal on each prescribed person by the prescribed mode of service no later than one working day after the date of service of the notice of withdrawal on the respondent or respondents.

(3) The applicant must also submit a copy of the notice of withdrawal to the Registrar together with a declaration in Form D of service of the notice of withdrawal on the persons mentioned in paragraphs (1) and (2), within 2 working days after the date of service of the notice of withdrawal on the respondent or respondents.

(4) To avoid doubt and subject to regulation 6, the applicant is not prevented by the withdrawal of the application from applying again for the appointment of an assessor to make a determination.

Notification to relevant tribunal on conclusion of application

13.—(1) Where an application has been concluded, whether by a dismissal or withdrawal of the application or a determination, and —

- (a) the proceedings mentioned in section 37A(6)(a), (b), (c) or (d) of the Act were pending at the time the application was concluded; and

- (b) a copy of the application has been lodged pursuant to section 37A(6) of the Act with the relevant tribunal before which the proceedings are pending,

the applicant must, not later than 2 working days after the conclusion of the application, file with the relevant tribunal a notification of the withdrawal of the application in Form E or of the dismissal or determination in Form J —

- (c) that contains information identifying the proceedings before the relevant tribunal; and
- (d) that is accompanied by —
- (i) a copy of the notice of the assessor's dismissal or determination; or
- (ii) a copy of the notice of withdrawal and a copy of the declaration of service of the notice of withdrawal on the persons mentioned in regulation 12(1) and (2),
as the case may be.

(2) In this regulation, “relevant tribunal” means the court, arbitral tribunal, authorised nominating body or adjudicator as defined in SOPA, or other person or body, before which the proceedings mentioned in section 37A(6)(a), (b), (c) or (d) of the Act are brought.

Other procedural matters

14.—(1) Regulation 6 of the Part 2 Regulations applies in relation to the service of any document under these Regulations as it applies in relation to the service of a document under those Regulations, and for this purpose, a reference to the electronic system is to the electronic system established under regulation 15.

(2) Regulation 12 of the Part 2 Regulations applies in relation to the submission of documents to the Registrar or an assessor under these Regulations as it applies in relation to the submission of documents to the Registrar or an assessor under those Regulations.

(3) Regulation 13 of the Part 2 Regulations applies in relation to communications by the Registrar or an assessor with parties to a determination under these Regulations as it applies in relation to the

communications by the Registrar or an assessor with parties to a determination under those Regulations.

(4) Regulation 16 of the Part 2 Regulations applies in relation to an application or a response under these Regulations as it applies in relation to an application or a response under those Regulations.

(5) Regulations 18 and 19 of the Part 2 Regulations apply in relation to a hearing and a determination under these Regulations as they apply in relation to a hearing and a determination under those Regulations.

(6) Regulation 20 of the Part 2 Regulations applies in relation to a hearing in which a party to the determination is absent under these Regulations as it applies in relation to a hearing in which a party to the determination is absent under those Regulations, with the following modifications:

- (a) a reference to Form 9 in regulation 20(3)(a) of the Part 2 Regulations is a reference to Form G;
- (b) a reference to 5 working days in regulation 20(3)(b) of the Part 2 Regulations is a reference to 2 working days;
- (c) a reference to Form 10 in regulation 20(4) of the Part 2 Regulations is a reference to Form H.

(7) Regulations 21 and 25 of the Part 2 Regulations apply in relation to a determination under these Regulations as they apply in relation to a determination under those Regulations, and for this purpose a reference to Form 11 in regulation 25 of the Part 2 Regulations is a reference to Form I.

(8) Regulation 24 of the Part 2 Regulations applies in relation to a failure to comply with a requirement of these Regulations as it applies in relation to a failure to comply with a requirement of those Regulations.

(9) Regulation 26 of the Part 2 Regulations applies in relation to the period to serve a party or submit to the Registrar a document or form under these Regulations as it applies in relation to the period to serve a party or submit to the Registrar a document or form under those Regulations.

- (10) In this regulation, “party to the determination” means —
- (a) the applicant; or
 - (b) a person who is served with a copy of the application under section 37(2) of the Act,

and includes a person authorised by that party to represent the party in relation to the determination.

Electronic system

15.—(1) The electronic system established under regulation 7 of the Part 2 Regulations may be used for the following purposes:

- (a) to facilitate an application;
- (b) to facilitate the service of a copy of an application under section 37(2) of the Act;
- (c) to facilitate the submission of certain forms and documents to the Registrar or an assessor in relation to an application and the proceedings thereto;
- (d) to facilitate the service of certain of those forms and documents.

(2) Regulation 8 of the Part 2 Regulations applies in relation to the use of the electronic system for the purposes in paragraph (1) as it applies in relation to the use of the electronic system for the purposes in regulation 7(2) of those Regulations.

Records and publication of determinations

16.—(1) The Registrar must keep the records of every assessor’s determination, including the documents submitted by parties to an assessor’s determination.

(2) The records may be kept in a form and manner determined by the Registrar.

(3) After an assessor has made a determination, a party to the determination may, on payment of any fee that may be prescribed by an order under section 46(1) of the Interpretation Act (Cap. 1) —

- (a) search the record relating to that determination; and

(b) take a copy of the record.

(4) The records must be kept for a period of 2 years after the end of the prescribed period.

(5) Regulation 30 of the Part 2 Regulations applies in relation to the publication of a determination under these Regulations as it applies in relation to the publication of a determination under those Regulations.

(6) In this regulation, “party to the determination” means —

(a) the applicant; or

(b) a person who is served with a copy of the application under section 37(2) of the Act,

and includes a person authorised by that party to represent the party in relation to the determination.

Made on 29 September 2020.

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