

# FAQ: COVID-19 Act 2020 – Reliefs for Rent Obligation

for LexisNexis Resource Hub – COVID-19



The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (COVID-19 Act), has finally been gazetted and came into force on 23 October 2020.

The Act, which will remain in operation for a period of two years from the date of its publication, seeks to provide temporary measures to reduce the impact of COVID-19, including modifications to the provisions of certain legislations for a temporary period. This FAQ will address the modifications affecting rent obligations, related issues that may arise, and whether the COVID-19 Act has tackled these issues.

## Rent Obligation - Introduction

### 1. What is the current legal position in terms of rent obligation for both non-residential and residential lease?

Section 230 [National Land Code 1965](#) provides that every lease or sub-lease shall be implied on the part of the lessee or sub-lessee, an agreement that all rent due or falling due will be paid. Non-payment or late-payment of rent, subject to the terms of the lease agreement, is the most common breach of the lease agreement which may give rise to the termination of the agreement.

### 2. What are the remedies available to a landlord or lessor in the event of a breach by the tenant or lessee for failing to make payment of rent?

Generally, the landlord or lessor has 3 options:

- apply to the Court under s 5 [Distress Act 1951](#) for the issuance of a warrant of distress to recover rent due for a period not exceeding 12 months of the tenancy or lease immediately preceding the date of the application. If the application is granted, the court bailiff may seize any movable property of the tenant at the demised premises, which shall be sold to satisfy the outstanding rent and costs due to the landlord. A tenant in this situation refers to any person from whom a landlord claims rent to be due under any lease, sub-lease or agreement.
- exercise his right to forfeiture under s 234 [National Land Code 1965](#) by giving notice to the tenant or lessee to remedy the breach. If the tenant or lessee fails to do so, the landlord or lessor may elect to enforce the forfeiture by re-entering the premises, subject to the provisions of any other written law for the time being in force

Updated as at 25 October 2020.

- terminate the tenancy or lease in accordance to the terms of the tenancy or lease agreement, including serving on the tenant or lessee a notice to quit or vacate the premises. If the tenant or lessee refuses to vacate the premises, the landlord or lessor may apply to Court for an eviction order to reclaim possession

### **Modifications to the Distress Act 1951**

#### **3. What are the modifications to the Distress Act under the COVID-19 Act?**

Part X, ss 29 to 31 COVID-19 Act, prescribes for the modifications to the Distress Act. Section 30 COVID-19 Act specifically provides that a warrant of distress issued under s 5(1) Distress Act shall not include seizure for the arrears of rent for the period from 18 March 2020 to 31 August 2020 (Relevant Period).

After the COVID-19 Act is enacted into law, the modification under s 30 COVID-19 Act is deemed to have come into operation on 18 March 2020 and shall continue to remain in operation until 31 December 2020.

#### **4. Can the Relevant Period be extended?**

No, unlike other parts of the COVID-19 Act, Part X does not provide for an option to extend the Relevant Period stipulated under s 30 COVID-19 Act.

#### **5. In light of s 30 COVID-19 Act, can a warrant of distress still be issued during the Relevant Period?**

Yes, the COVID-19 Act does not preclude a landlord from applying for a warrant of distress. The only restriction is that the landlord would be prohibited from recovering outstanding rent for the Relevant Period.

#### **6. Do the modifications to the Distress Act under the COVID-19 Act apply to both residential and non-residential tenancies or leases?**

Yes, based on Part X COVID-19 Act the modifications to the Distress Act do not distinguish between residential and non-residential tenancies or leases.

#### **7. What are the issues that may arise from the saving provision in s 31 COVID-19 Act?**

The saving provision states that any warrant of distress issued prior to the enactment of the COVID-19 Act is not affected. In other words, landlords whose warrants of distress were issued prior to the enactment of the COVID-19 Act ie 23 October 2020 may still seize the movable property of their tenants for the arrears of rent for the Relevant Period. Such provision effectively nullifies the relief

sought to be accorded by s 30 COVID-19 Act, as well as the very object and purpose of the Covid-19 Act.

### **Inability to perform contractual obligations (rent obligations)**

#### **8. Is there any other provision under the COVID-19 Act that is applicable to rent obligations?**

Yes, Part II COVID-19 Act, specifically s 7, deals with the scope for the inability to perform contractual obligations.

#### **9. How is s 7 COVID-19 Act relevant to rent obligations?**

The categories of contract to which s. 7 COVID-19 Act applies are specified in the Schedule to Part II COVID-19 Act. This includes lease or tenancy of non-residential immovable property, listed as item 4 of the Schedule.

#### **10. Could the phrase 'contractual obligation arising from... contract' be interpreted to include rent payment obligation on part of the lessee or tenant?**

Yes, rent obligations are usually spelled out in the lease or tenancy agreement. It should be noted that the party who is seeking to rely on s 7 COVID-19 Act must prove that their inability to perform contractual obligations is due to the measures prescribed, made or taken under the [Prevention and Control of Infectious Diseases Act 1988 \(Act 342\)](#) to control or prevent the spread of COVID-19.

#### **11. What is the enforcement period for the relief provided under Part II COVID-19 Act?**

Although the COVID-19 Act was enacted into law on 23 October 2020, Part II is deemed to have come into operation on 18 March 2020 and shall continue to remain in operation until 31 December 2020.

However, the Minister of Law may, by order published in the Gazette, extend the operation of Part II<sup>1</sup>, and such order shall be laid before the Dewan Rakyat as soon as practicable after its publication in the Gazette.<sup>2</sup>

#### **12. What are the issues that may arise from the saving provision in s 10 COVID-19 Act?**

Based on the saving provision in s 10 COVID-19 Act, parties to a lease or tenancy for non-residential immovable property will not be able to claim the relief offered in s 7 COVID-19 Act if

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<sup>1</sup> Section 5(2), COVID-19 Act

<sup>2</sup> Section 5(4), COVID-19 Act

either party has commenced legal action to enforce or terminate the contract prior to the publication of the COVID-19 Act ie 23 October 2020.

**13. Would s 7 COVID-19 Act still apply if the tenancy or lease agreement contains a force majeure clause? If so, which would be the better avenue to pursue?**

Yes, parties are at liberty to invoke the relief under s 7 COVID-19 Act notwithstanding the existence of a force majeure clause in the tenancy or lease agreement.

A force majeure clause is a contractual term that regulates the obligations and performance of the contract when events beyond the control or not due to the fault of the contracting parties occur. The force majeure clause usually has an effect of excusing or suspending the performance of the contract during the period of the force majeure event, without bringing the contract to an end.

Parties' eligibility to seek protection via the force majeure clause would largely depend on the wordings of the clause, in particular, whether the parties have earlier contemplated and included a pandemic or any action taken by a government or public authority as force majeure events.

Where a pandemic is not included as a force majeure event or the lease or tenancy agreement does not contain a force majeure clause, the statutory protection under s 7 COVID-19 Act may be the only option available.

As mentioned earlier, the party who is seeking to rely on s 7 COVID-19 Act must prove that their inability to perform contractual obligations is due to the measures prescribed, made or taken under the [Prevention and Control of Infectious Diseases Act 1988 \(Act 342\)](#) to control or prevent the spread of COVID-19. Notably, the COVID-19 Act does not define the parameters of the inability to perform any contractual obligation.

Ultimately, tenants or lessees who are unable to meet their rent obligations due to the detrimental effect of COVID-19 would have to make their own assessment on which option accords the best protection under the prevailing circumstances, ie whether to invoke the force majeure clause (if available) or s 7 COVID-19 Act.

*In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.*

## About the Authors

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Ai Ting, having been recommended in The Legal 500 Asia Pacific 2019 ranking, has extensive experience in complex real estate disputes and compulsory land acquisitions. She also regularly advises major developers on disputes involving homebuyers.

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Wong Eu Ca Matthew joined Lee Hishammuddin Allen & Gledhill in 2019. He graduated from the University of Manchester and was called to the Bar of England and Wales (Lincoln's Inn) in 2018.

Matthew started his practice with Lee Hishammuddin Allen & Gledhill's tax practice group focusing on income tax disputes, defending tax recovery and tax advisory. He has now transitioned to the dispute resolution practice with experiences in real estate and contractual disputes.

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