Updated on: 6 July 2020

SELECTED DETERMINATIONS MADE BY ASSESSORS UNDER THE COVID-19 (TEMPORARY MEASURES) ACT

IMPORTANT NOTES

- This document comprises a brief update on selected cases that have been determined by Assessors appointed under the COVID-19 (Temporary Measures) Act 2020 ("**Act**"). The document will be updated with other cases from time to time.
- The summary and explanatory notes have been compiled to assist in an understanding of the cases that have come before the Assessors.
- Assessors seek to achieve a just and equitable outcome for the parties based on the facts and circumstances of each case. It is emphasised that the brief summary and explanatory notes do not represent all the reasons that the Assessors may have considered in arriving at their determinations in these cases. As such, if you are a party to an ongoing determination, these cases may illustrate a general approach to cases, but your case will be determined on its own facts, and you may have a different result or outcome in your case.

S/No	Key Facts	Determination	Explanatory Notes
(A)	**EVENT CONTRACTS**		
1.	**<u>Wedding Banquet</u>** • Party A and Party B (a restaurant) entered into a contract in September 2019, for a wedding dinner to be held in July 2020. Party A paid a deposit of $3,000. • Party A contacted Party B in March 2020 to convey her concerns about proceeding with the event in light of the evolving COVID-19 situation. Party A conveyed her concerns again in April 2020. • Party B informed Party A that it would allow for a postponement of the event to August-December 2020 at no additional cost. However, additional costs would be imposed if the event was postponed beyond that.	• Party B was allowed to keep about $900 out of the deposit of $3,000 that Party A had paid. • Party B was to provide a refund of the remainder to Party A within 4 weeks of the determination. • The contract was cancelled. • Each party shall not have any other claims against the other arising from the contract.	• In many event contracts, the vendor is permitted to forfeit the entire deposit if the event is cancelled. Additionally, the vendor may be contractually entitled to impose cancellation fees. • COVID-19 was an unexpected event for event service providers and consumers alike. It may be unfair for the usual contract clauses to operate strictly in a situation like this. • The Act was therefore passed to allow Assessors to consider the positions of both contracting parties and seek to make a determination that is just and equitable for all parties involved, taking into account all the circumstances of the case. • However, the Act does not mandate that deposits be refunded in full. The result must be fair.

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	• According to the contract: ▪ The deposit paid was "*strictly non-refundable and non-transferable due to any event of cancellation or withdrawal by the wedding couple under any circumstances at all*". ▪ Further, "*compensation shall be imposed on the wedding couple*" in the event of "*any withdrawal and cancellation by the wedding couple*". If the wedding banquet was cancelled less than 3 months before the banquet date, the compensation payable would be 80% of the total cost of the wedding banquet. • Party B also informed Party A that if she wished to cancel the event, it would take legal action against her and pursue the cancellation clause in the contract. Party B was willing to allow Party A to cancel the event only if Party A provided an additional sum of about $15,000 on top of the deposit of $3,000 paid earlier. • Party A stated that she worked as a freelance wedding photographer and had no income herself. She further stated that her fiancée had just been retrenched. Party A was uncertain about whether the event could be held in August-December 2020, and the additional costs that the Restaurant intended to charge for the event to be postponed to 2021 exceeded their budget.		• In this case, because of the Act, instead of potentially losing all $3,000 of the deposit and be exposed to cancellation charges, Party A obtained a refund of $2,100.
2.	**<u>Make-up and Styling Services for Wedding</u>** • Party A and Party B (make-up artist) entered into a contract on 1 December 2019, for the latter to provide her make-up and hair-styling services to the former for her wedding on 17 May 2020.	• Party B was allowed to keep about $70 out of the deposit of $370 that Party A had paid. • Party B was to provide a refund of the remainder to Party A within 4 weeks of the determination. • The contract was cancelled.	• COVID-19 was an unexpected event for event service providers and consumers alike. • In this case, the cancellation was sought by Party A, who was not willing to accept any other proposal from Party B, including Party B's offer to provide the same services under the contract at the same price at a later wedding date.

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	• Party A paid a deposit of $370. While there was no written contract, there was an agreement between parties that the deposit paid was non-refundable. • As the wedding event could no longer to be held as planned due to COVID-19, Party B proposed that Party A make use of the services on a later date. Party B was also willing to offer Party A the same services in the future at the same price even though Party B's rates might increase in the future. • However, Party A was not willing to accept Party B's proposal. Party A had also cancelled the wedding event which was to be held in a Hotel and therefore, no longer required the services. • Party A sought a full refund of her deposit. • Party B confirmed that she has not incurred any specific expenses for the purposes of fulfilling her obligations under the contract.	• Each party shall not have any other claims against the other arising from the contract.	• On balance, it would be fair for a portion of Party A's deposit to be forfeited. • In this case, because of the Act, instead of potentially losing the entire deposit, Party A obtained a refund of $300.
3.	**<u>Wedding Event</u>** • Party A and Party B (event service provider) entered into an agreement in July 2019, for a wedding dinner to be held on 17 October 2020. Party A paid a deposit of $3,000. • According to the contract: ▪ The deposit was "*non-refundable and non-transferable*". ▪ Further, "*the deposit will be forfeited*" and "*cancellation charges will be applicable*" should the event be cancelled. If the event was cancelled within 3 months before the	• Party B was allowed to keep $1,500 out of the deposit of $3,000 paid by Party A. • Party B was to provide a refund of the remainder to Party A within 4 weeks of the determination. • The contract was cancelled. • Each party shall not have any other claims against the other arising from the contract.	• COVID-19 was an unexpected event for event service providers and consumers alike. • In this case, the cancellation was sought by Party A, who was not willing to accept any other proposal from Party B, including postponing the wedding. • On balance, it would be fair for a portion of Party A's deposit to be forfeited.

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	date of the event, the cancellation charges payable would be 100% of the total charges for the dining slot calculated based on the minimum guaranteed. ▪ The cancellation charges would also be applicable for postponement of the event. • Party A stated that it was unable to hold its wedding, as the COVID-19 measures in place had prevented its overseas guests from travelling to Singapore. • Party B was of the view that the situation may change given that the event was still 6 months away. • Nevertheless, Party B gave Party A the option of postponing the event until October 2021. Alternatively, Party B proposed waiving its right to pursue cancellation fees if Party A signed a Cancellation Agreement and agree to have the deposit sum of $3,000 forfeited. • The Cancellation Agreement stated that by signing the agreement, Party A would be waiving its right for a determination under the Act. Party A did not sign the agreement and, instead, sought a determination.		
4.	**<u>Wedding Band</u>** • Party A entered into an agreement with Party B (band) in January 2020, to perform at a wedding banquet scheduled to be held in April 2020. Party A paid a deposit of $500. • According to the agreement:	• Party B shall issue a voucher to the equivalent sum of the deposit of $500 in favour of Party A. The voucher may be used to offset the deposit and / or contract price of any future contract requiring the services of Party B. • The voucher shall be transferable at the option of Party A and the voucher is to remain valid up till and including the date of 31 December 2021. • The contract was cancelled.	• In this case, Party B had already paid out the deposit to the musicians and sound crew and would have to recover the money if it had to return the deposit to Party A. • There was no certainty Party B would be able to recover those sums from the third parties. There was also a concern that the process of recovering the payments from the musicians and sound crew could cause a knock-on effect and further financial distress down the line.

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	▪ "*In the event [Party A] cancels or postpones the engagement, the deposit will be forfeited and no refund shall be made*." • Due to COVID-19, Party A could not proceed with the wedding banquet. Instead, Party A intended to hold a ROM solemnisation ceremony on 24 September 2020 with no celebrations. • Party A no longer required Party B's services and wished to get a refund of at least 70% of its deposit. • Party B produced bank statements evidencing that it had already used the deposit to pay for (a) the booking fee for two musicians; (b) the booking fee for sound crew; and (c) management, liaising and administrative costs. • According to Party B, it did not have the financial ability to repay the deposit. However, as a gesture of goodwill, Party B was willing to provide a refund of $50.		• This determination seeks to strikes a balance between Party A, whose wedding plans were disrupted by COVID-19, and the financial hardship of Party B and other third parties, caused by the cancellation and the overall COVID-19 situation.
5.	**<u>Cancellation Agreement for Wedding Banquet</u>** • Party A and Party B entered into a contract in April 2019, for a wedding event to be held in May 2020. • As a result of COVID-19, Party A signed a cancellation agreement with Party B, dated 5 April 2020, to cancel the event. Under the cancellation agreement, Party B agreed to provide a refund of sums paid previously by Party A. • However, there was a disagreement between Party A and Party B as to whether the refund under the cancellation agreement should be	• This was **<u>not</u>** a case in which section 5 of the Act applied. • The original contract dated 25 April 2019 had already been cancelled by both parties by way of a cancellation agreement dated 5 April 2020. • Therefore, this was not a contract entered into on or before 25 March 2020 and the contractual obligations would have accrued after 5 April 2020.	• In this case, the wedding contract had already been terminated by mutual agreement. • The dispute was over the terms of the cancellation agreement dated 5 April 2020, which was an agreement after 25 March 2020. • The Act only applies to scheduled contracts entered into before 25 March 2020. Therefore, this was not a contract that was covered under the Act.

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	made by cheque or a refund to Party A's credit card. • There was also a disagreement between Party A and Party B on the specific expenses incurred by Party B for the printing of invitation cards. Party A sought a determination on this matter as well.		
(B) TOURISM-RELATED CONTRACTS			
6.	• Party A had signed a package with Party B (tour agency) to visit Japan in March 2020. • Party A requested for a full refund of its deposit of $6,000. • Party B declined to provide a full refund. • According to the contract: ▪ The fares and tickets were "*non-refundable, non-endorseable, non-reroutable and non-transferable*". ▪ Party B reserved the right to impose cancellation fees on Party A, in accordance with its cancellation policies. For example, if the tour was cancelled 3 days before the intended date of departure, Party A would have to pay the cost of the full tour. If it was cancelled more than 35 days in advance, the cancellation fees would amount to the full deposit and a further $500. • However, Party B was willing to allow the deposit to be converted into travel credits to be used up until 31 December 2021, with a change of destination and/or passengers (if required by Party A) without any extra cost.	• Allow $3,000 out of the deposit of $6,000 to be converted into travel credits for Party A. • These travel credits are to be used by 31 December 2021, with a change of destination and/or passengers at no extra cost (if required by Party A). • Party B to refund the balance amount of $3,000 to Party A within 4 weeks from the date of determination. • Each party shall not have any other claims against the other arising from the contract.	• Just like event contracts, many tour agreements provide that the entire deposit may be forfeited if the tour is cancelled. Additionally, the tour agency is entitled to impose cancellation fees on the other party. • The Act allows determinations to be made so that the outcome is just and equitable for all parties. • In this case, by virtue of the Act, Party A was able to keep the deposit fully intact, instead of being entirely forfeited. Part of the payment that Party A had made could be used for other parties and for other destinations (which would not have been possible if the terms of the contract applied). • This is a win-win, as Party B gets the opportunity to earn at least part of the revenue in the future while Party A does not lose any of its deposit.

S/No	Key Facts	Determination	Explanatory Notes
(C)	**LEASES / LICENCES OF NON-RESIDENTIAL IMMOVABLE PROPERTY**		
7.	• This matter concerned a renewed lease for 12 months. The lease commenced in March 2020 and will expire in March 2021. • The application for determination was filed by Party B (the tenant). • Party B ran a boutique selling clothes from independent designers and emerging brands. As a result of COVID-19, Party B's business had been impacted. • Party B was unable to pay rent from April 2020 onwards and had produced its financial documents to show the decline in its revenue. • According to Party B, Party A (the landlord) was not willing to negotiate and had threatened to send a contractor down to block the entrance to the premises.	• This was a case to which section 5 of the Act applies. • Parties may apply for a further determination, if necessary, in August 2020.	• Where section 5 of the Act applies, Party A is prohibited from taking legal or enforcement actions against Party B during the prescribed period. The list of prohibited actions is found in section 5(3) of the Act and include prohibiting Party A from exercising a right of re-entry or any other right that has a similar outcome. • The COVID-19 (Temporary Measures) (Amendment) Act will provide rental relief to tenants. The details of this will be announced in due course. Therefore, parties may apply for a further determination if necessary in August 2020 (after the details have been announced).
8.	• The Notification for Relief was served by Party A (landlord) of an office space. The Application for Determination was also made by Party A. • In his application, Party A outlined several complaints against Party B (tenant): ▪ Party B was not paying his rent, and broadband and electricity bills. ▪ Party B had been doing well in its business. The property tax rebates had also been passed down to Party B. Despite this, Party B had not been paying its rent. This made the	• This was **not** a case in which section 5 of the Act applied. • Party A (who was the party that served the Notification for Relief) had not shown any inability to perform its contractual obligation(s) under the tenancy agreement.	• The Act provides relief to parties who are unable to perform their contractual obligations as a result of COVID-19. It does not create a new avenue for contracting parties to pursue claims. • The Act allows a party who has a "subject inability" to serve a Notification for Relief. A "subject inability" refers to an inability to carry out an obligation in a contract. The contract must also be one of the types of contracts listed in the Schedule. • In this case, the contract was of a type listed in the Schedule – it was a lease in relation to non-residential premises.

S/No	Key Facts	Determination	Explanatory Notes
	situation difficult for Party A as he had loans to repay and needed the rental income.		• However, it was Party A, the landlord, who had filed the Notification for Relief. The Landlord had not demonstrated any "subject inability". This was not a case where the Landlord was unable to fulfil any of its contractual obligations. • The landlord should pursue its claim in the normal way. Since Party B had not served an Notification for Relief in this case, Party A was not prohibited from enforcing its contractual rights under the Act against Party B.
9.	• This case involved a tenancy agreement entered into on February 2019. The lease was to expire in April 2020. • On 20 March 2020, Party A (tenant) informed Party B (landlord) that it wanted to terminate the lease as it "*cannot sustain the kitchen anymore*". • Party B then signed a new lease with other parties on 1 April 2020. Party A was aware of this. • On 21 April 2020, Party A served a Notification for Relief on Party B and indicated that it wished to continue with the lease. Party A had by then paid up its outstanding rent. • Party B filed an application to determine "*who has the right to the [Premises] and to award it accordingly*".	• This was **not** a case in which section 5 of the Act applied.	• The Act provides relief where there is a "subject inability". A "subject inability" refers to an inability to carry out an obligation in a contract. • In this case, Party B sought a determination on whether it should (a) allow Party A to continue with the lease, and if so, on what terms; or (b) proceed the lease with the new tenant. • The determination sought did not relate to a subject inability materially caused by a COVID-19 event. In addition, the determination sought by Party B was not relief that the Act could provide. • Therefore, relief under the Act was not available.
(D)	**HIRE-PURCHASE AGREEMENT OR CONDITIONAL SALES AGREEMENT**		
10.	• Party A (a private car driver) and Party B (a finance company) entered into a hire-purchase agreement for a private-hire vehicle in June 2017. • Party A paid instalments up to 1 March 2020.	• This was a case to which section 5 of the Act applies. • Party A is to make payment of $3,000 by end May 2020. This will settle the outstanding arrears for April and May 2020.	• Given that section 5 of the Act applies, Party B is prohibited from taking legal and enforcement actions against Party A during the prescribed period. These include prohibiting Party B from repossessing the vehicle or taking out legal proceedings against Party A.

S/No	Key Facts	Determination	Explanatory Notes
	• Party A was unable to pay instalments from April 2020 due to reduced ridership. • Party A proposed to pay instalments for April and May (around $2,500 in total) after getting its first Self-Employed Person Income Relief Scheme (SIRS) pay-out in May 2020, and another $3,000 (for June, July and any outstanding) using its SIRS pay-out that it would be receiving in July. Party A agreed to pay the usual sums from August onwards. • Party B's position was that if Party A did not pay its instalments from April 2020 in time, its future obligations would increase as late payment charges and late interest would continue to accrue during this period.	• From June to July 2020, Party A is to make payment of $3,000 in July 2020 when it gets its SIRS pay-out, and the remaining outstanding arrears (if any) by 1 August 2020. • Party A is to resume normal instalment payments from August 2020 onwards.	
11.	• This case involves 13 agreements in relation to 13 commercial vehicles – called "Operating Lease Agreements", between Party A and Party B (leasing company). • These agreements were entered into before 25 March 2020. • Party A is involved in the oil / gas industry. As a result of COVID-19, Party A had been unable to pay "rent" from March 2020 onwards. • Party B expressed that the agreements were not scheduled contracts and that the relief measures should not apply. • Party A's position was that the agreements were "contract hire agreements" and were thus covered by the Act. • Party B had offered a 3-month payment moratorium, with effect from March 2020.	• Section 5 of the Act does **not** apply. • The 13 Operating Lease Agreements were leasing agreements and not hire-purchase agreements or conditional sales agreements as defined under paragraph 1(d) of the Schedule to the Act. • As the 13 Operating Lease Agreements were not scheduled contracts under the Act, Party A was not entitled to relief under the Act.	**Important Note:** • This determination was made before the new category of contracts involving leases in relation to commercial equipment / vehicles was included in the Schedule. This category was included on 20 June 2020. • Section 5 of the Act only applies to a case involving a scheduled contract. • At the point the determination was made, the various agreements were not scheduled contracts. Therefore, relief under the Act was not available.

S/No	Key Facts	Determination	Explanatory Notes
12.	• Party A is involved in the motor car sales, car rental, leasing and motor-related services business. • Party B is involved in the provision of private-hire transportation services business. • Party A entered into a hire-purchase agreement with Party B in February 2018. • Under the hire-purchase agreement, Party B was supposed to pay monthly instalments of $1,916. • Party B had not paid its instalments since January 2020 and had chalked up arrears. • Party A's position was that Party B's inability to pay was not due to COVID-19 as it had not been able to fulfil its obligations even prior to COVID-19. Party A submitted payment records to illustrate this.	• This was **not** a case in which section 5 of the Act applied.	• The Act provides relief where the inability to perform obligations under the contract is materially caused by a COVID-19 event. • While the contract was a scheduled contract, there was insufficient evidence to show that Party B's inability to pay its monthly instalments was, to a material extent, caused by COVID-19. The payment records showed that Party B had faced difficulties performing its contractual obligations even before the onset of the pandemic. Therefore, this was not a case to which relief under the Act applied.
13.	• Party A and Party B entered into a hire-purchase in June 2018. • However, the Notification for Relief was submitted by Party C, who was a guarantor. • The hire-purchase agreement was in relation to a commercial vehicle which was used to provide private hire services to tourists. In light of COVID-19, the business had been severely affected. • Party A's position is that it would not be able to pay its instalment plans.	• This was **not** a case in which section 5 of the Act applied.	• The Act only allows parties to the hire-purchase agreement to serve a Notification for Relief. • In this case, the Notification for Relief had been filed by Party C, who was not a party to the hire-purchase agreement. • Instead, Party C was a co-guarantor of Party A's obligations under the HPA under a separately executed guarantee agreement. • Therefore, the Notification for Relief was invalid and section 5 of the Act did not apply. • Party C could have procured Party A to serve the Notification for Relief on both Parties B and C.

S/No	Key Facts	Determination	Explanatory Notes
(E)	**LOANS BY BANKS AND FINANCE COMPANIES TO SINGAPORE SMEs**		
14.	• Party A was the purchaser of certain receivables from Party B under a "Factoring Agreement". • The Factoring Agreement was entered into in October 2011. • Party B's account was classified as a non-performing loan since 2014 – Party B had defaulted on payment and parties had entered into numerous payment restructuring plans since 2018. • Party B served a Notification for Relief on Party A, citing a contract purportedly entered into in January 2012. • Party B also stated that the relevant obligation to make certain payments was to be performed on 31 March 2020 and that it was unable to perform this obligation due to COVID-19. • The obligation appeared to have been pursuant to a restructured payment plan agreed between parties, dated 18 February 2020. • It was clear that the payments on which the restructured payment plan had been agreed were payments due under the Factoring Agreement.	• This was **not** a case in which section 5 of the Act applied.	• The Factoring Agreement and the restructuring payment plan (which was based on the Factoring Agreement) were both not Scheduled Contracts under the Act. Therefore, relief under the Act was not available to Party B.
(F)	**CONSTRUCTION OR SUPPLY CONTRACTS**		
15.	• Party A was a sub-contractor of Party B for a construction project. The project was completed in October 2017.	• This was **not** a case in which section 5 of the Act applied, as the Deed of Settlement was not a scheduled contract. • In addition, the contractual obligation was not to be performed on or after 1 February 2020.	• The Act provides relief to the types of contracts that are listed in the Schedule. Further, relief is only available in relation to obligations arising on or after 1 February 2020.

S/No	Key Facts	Determination	Explanatory Notes
	• Party B defaulted on the payments due to Party A and Party A took action under the Building and Construction Industry Security of Payment Act against Party B. • Party B asked to settle the matter and a Settlement Agreement was signed in November 2018. • Party B defaulted on its payments again and both Party A and B ended up signing another Deed of Settlement in October 2019. Under the Deed of Settlement, payment was due on 31 December 2019 and 1 January 2020. • Party B defaulted on its payments yet again. In May 2020, Party B served a Notification for Relief on Party A. Party A objected on the basis that payments had been long outstanding and relief should not be granted.	• Therefore, Party B was not entitled to relief under the Act. Party A can, therefore, take legal and enforcement action against Party B for the debts owed to A.	• In this case, the dispute was over the Deed of Settlement, which dealt with repayment of debts and was not a construction contract or a supply contract. This was therefore not a type of contract that was listed in the Schedule to the Act. • Also, according to the Deed of Settlement, the payments were meant to be made in December 2019 and January 2020. Therefore, the obligation that Party B could not perform were before 1 February 2020 – this was another condition for relief under the Act that was not satisfied.
16.	• Party A (a contractor) and Party B (a sub-contractor) entered into an agreement in March 2019. • Party A was engaged by Party C under the main contract. • The contract was in relation to the construction of a 51-storey commercial building. • Under the contract, Party B was supposed to supply and install ACMV duct works (including dampers and grills). • Party A's position was that COVID-19 had severely disrupted the flow of materials and labour. This had impacted work progress. The lower collection had affected its cashflow. As a	• This was a case to which section 5 of the Act applies. • Party B may not take any action described in section 5(3) of the Act in relation to any monies owed by Party A under the relevant contract only until 1 September 2020. • Party B is at liberty to take such action described in section 5(3) of the Act to enforce the Adjudication Determination and / or pursue its claims against Party A under the relevant contract after 1 September 2020.	• While Party A had been materially affected by a COVID-19 event, Party B had also been affected by the same. It is also noted that Party B had already obtained an Adjudication Determination on 30 April 2020. • Therefore, although relief under the Act applied, deferment of the full period of 6 months requested by Party A would cause significant hardship to Party B. • A just and equitable solution would be to allow Party A the relief under Section 5(2) of the Act until 1 September 2020. This would cover the 2 months "lost" as a result of the Circuit Breaker measures and an additional month buffer which would take into account the usual practice for contractors such as Party A to make payment claims at the end of each month.

S/No	Key Facts	Determination	Explanatory Notes
	result, Party A was unable to make payment to Party B. • Party B was of the view that Party A could make payment. Party B had obtained an adjudication in its favour, which it wanted to enforce. Party B also wanted to take action against Party A under the contract. Party B claimed that it had been badly affected by Party A's failure to make payment.		