

# **COVID-19 (Temporary Measures) (Amendment No. 2) Bill**

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**Bill No. 34/2020 [Urgent Bill].**

*Read the first time on 3 September 2020.*

A BILL

*i n t i t u l e d*

An Act to amend the COVID-19 (Temporary Measures) Act 2020.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### Short title and commencement

1.—(1) This Act is the COVID-19 (Temporary Measures) (Amendment No. 2) Act 2020 and, except for sections 7 and 11(a), comes into operation on a date that the Minister appoints by notification in the *Gazette*.

(2) Sections 7 and 11(a) are deemed to have come into operation on 31 July 2020.

### Amendment of section 5A

2. Section 5A(1) of the COVID-19 (Temporary Measures) Act 2020 (called in this Act the principal Act) is amended by deleting the words “the date of commencement of section 5 of the COVID-19 (Temporary Measures) (Amendment) Act 2020” in paragraph (b) and substituting the words “1 February 2020”.

### Amendment of section 7A

3. Section 7A of the principal Act is amended —

(a) by deleting the words “, being a time within the prescribed period” in subsection (1)(b);

(b) by deleting the words “prescribed rate or amount” in subsection (2) and substituting the words “prescribed rate (as computed in the prescribed manner) or prescribed amount”;

(c) by inserting, immediately after the words “different rates” in subsection (3), the word “, manners”; and

(d) by inserting, immediately after subsection (6), the following subsection:

“(7) To avoid doubt, this section applies to a case mentioned in subsection (1) whether *A* served the notification for relief before, on or after 31 July 2020.”.

### **Amendment of section 7B**

#### **4. Section 7B of the principal Act is amended —**

(a) by inserting, immediately after subsection (2), the following subsection:

“(2A) For the purposes of subsection (2), different amounts may be prescribed for different circumstances, and a zero amount may be prescribed.”; and

(b) by inserting, immediately after subsection (5), the following subsection:

“(6) To avoid doubt, this section applies to a case mentioned in subsection (1) whether *A* served the notification for relief before, on or after 31 July 2020.”.

### **Amendment of section 12**

#### **5. Section 12 of the principal Act is amended —**

(a) by inserting, immediately after subsection (2), the following subsections:

“(2A) The Registrar may, for the purposes of deciding whether to appoint an assessor to determine an application, request the applicant to provide further information within the time specified by the Registrar.

(2B) The Registrar may reject an application if —

(a) the application is incomplete or otherwise not made in accordance with subsection (1);

(b) the application is not made within the period prescribed by regulations under section 19 for this purpose;

(c) the applicant fails to satisfy the Registrar that subsection (2) is complied with;

- (d) the applicant fails to comply with the Registrar's request under subsection (2A);
- (e) any part of the application is inconsistent with any information contained in the notification for relief served by the applicant under section 9(1), if applicable;
- (f) the Registrar reasonably suspects that any information provided by the applicant to the Registrar is false or misleading in a material particular; or
- (g) it appears to the Registrar, from the application or any information provided by the applicant under subsection (2A), that —
- (i) the contract in question is not a scheduled contract;
  - (ii) the contract in question is a contract described in section 4(1)(a) or (b);
  - (iii) the obligation or right in the contract in question is to be performed or exercised before 1 February 2020; or
  - (iv) the application is frivolous or an abuse of process.”; and

(b) by deleting the words “If the Registrar is satisfied that the application is made and served in accordance with subsections (1) and (2),” in subsection (3) and substituting the words “Unless the Registrar rejects an application under subsection (2B),”.

### **Amendment of section 13**

**6.** Section 13(1) of the principal Act is amended by inserting, immediately after the words “section 5” in paragraph (a), the words “or 5A (as the case may be)”.

### **Amendment of section 19J**

7. Section 19J of the principal Act is amended —
- (a) by deleting the words “an additional prescribed period” in subsection (1)(a) and substituting the words “a prescribed period”; and
  - (b) by deleting the words “the additional prescribed period” in subsection (2)(a) and (b) and substituting in each case the words “the prescribed period”.

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### **Repeal and re-enactment of section 19M**

8. Section 19M of the principal Act is repealed and the following section substituted therefor:

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#### **“Application for determination**

**19M.**—(1) This section applies when the owner of a prescribed property receives a notice of cash grant pertaining to a tenant that is purportedly a PTO of that property (called in this Division the subject tenant).

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(2) Any landlord (including the owner) or tenant of the property in the PTO chain (called in this Division the applicant) may, within the prescribed time, apply in the prescribed form and manner to the Registrar to appoint a rental relief assessor to make any of the determinations mentioned in subsection (3) or (4), as applicable.

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(3) If the applicant is a landlord, the determinations are —

- (a) whether the subject tenant satisfies the prescribed criteria for a PTO;
- (b) whether the subject tenant (being a PTO) satisfies the prescribed additional criteria for the additional rental relief; and
- (c) whether the applicant satisfies the prescribed criteria for a reduction of the additional rental relief.

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(4) If the applicant is either a landlord or tenant, the determinations are —

(a) the actual amount of the rent under the lease agreement; and

(b) the actual amount of any component of the formula used to compute the prescribed amount of rent that is waived under section 19H or 19J in the particular case.

(5) An application for a determination mentioned in subsection (4) may not be made if —

(a) proceedings before a court or an arbitral tribunal have commenced in relation to the matter in question; or

(b) a judgment of a court, an arbitral award, a compromise or a settlement has been given or made in relation to the matter in question.

(6) A copy of the application under subsection (2) must be served within the prescribed time on all the landlords (including the owner) and tenants of the property in the PTO chain and such other person as may be prescribed.

(7) The Registrar may, for the purposes of deciding whether to appoint a rental relief assessor to determine the application, request the applicant to provide further information within the time specified by the Registrar.

(8) The Registrar may reject an application if —

(a) the application is incomplete or otherwise not made in accordance with subsection (2);

(b) the applicant fails to satisfy the Registrar that subsection (6) is complied with;

(c) the applicant fails to comply with the Registrar's request under subsection (7);

(d) the Registrar reasonably suspects that any information provided by the applicant to the Registrar is false or misleading in a material particular;

(e) it appears to the Registrar, from the application or any information provided by the applicant, that the application is frivolous or an abuse of process; or

(f) where the application is for a determination mentioned in subsection (4) — it appears to the Registrar, from the application or any information provided by the applicant under subsection (7), that the application is made in breach of subsection (5).

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(9) Unless the Registrar rejects an application under subsection (8), the Registrar must appoint a rental relief assessor to determine the application and must serve a notice of the appointment on the applicant and the persons mentioned in subsection (6).”

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### **Amendment of section 19N**

9. Section 19N of the principal Act is amended —

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(a) by deleting subsection (1) and substituting the following subsection:

“(1) On an application under section 19M, the rental relief assessor must make a determination whether —

(a) in the case mentioned in section 19M(3)(a) — the subject tenant satisfies the prescribed criteria for a PTO;

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(b) in the case mentioned in section 19M(3)(b) — the subject tenant (being a PTO) satisfies the prescribed additional criteria for the additional rental relief;

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(c) in the case mentioned in section 19M(3)(c) — the applicant satisfies the prescribed criteria for a reduction of the additional rental relief;

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(d) in the case mentioned in section 19M(4)(a) — the actual amount of the rent under the lease agreement; or

(e) in the case mentioned in section 19M(4)(b) — the actual amount of the component of the formula in question.”; and

5 (b) by inserting, immediately after subsection (7), the following subsection:

“(8) Subsection (7) does not apply to an application for a determination mentioned in section 19M(4).”.

### **Amendment of section 19O**

10 **10.** Section 19O(3) of the principal Act is amended —

(a) by deleting the word “landlord” wherever it appears; and

(b) by inserting, immediately before the word “satisfies”, the words “(being a landlord)”.

### **Amendment of section 19X**

15 **11.** Section 19X of the principal Act is amended —

(a) by inserting, immediately after paragraph (b) of subsection (2), the following paragraph:

“(ba) provide for different prescribed periods under section 19H or 19J for the rent payable for —

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(i) different types of prescribed property; or

(ii) different parts of a prescribed property;” and

25 (b) by inserting, immediately after subsection (4), the following subsections:

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“(5) Regulations made under this section for the purpose of prescribing the amount of rent waived under section 19H(1) or 19J(1) in relation to any prescribed property, may be made to operate retrospectively to a date before the issue of the



notice of cash grant pertaining to a PTO of that property but not earlier than 31 July 2020.

(6) Regulations made under this section may, in respect of any retrospective regulations in subsection (5), also provide for the recovery by a party to a lease agreement of an amount from the other party that was paid to or withheld by the other party in reliance on section 19H or 19J and the regulations in force before the date the retrospective regulations were made.”.

### **Amendment of section 27**

**12.** Section 27 of the principal Act is amended —

- (a) by deleting the words “, the Minister may, if the Minister considers that it would be inexpedient or impracticable for the meeting or class of meetings to be convened, held or conducted in the manner provided for in the written law or legal instrument in view of a control measure,” in subsection (1) and substituting the words “and the Minister considers that it would be necessary or expedient for the meeting or class of meetings to be convened, held or conducted in a manner other than that provided for in the written law or legal instrument to limit or prevent the spread of COVID-19, the Minister may”;
- (b) by deleting paragraph (a) of subsection (5);
- (c) by deleting the words “the date that the control measure in respect of which the order was made came into force” in subsection (5)(c) and substituting the words “27 March 2020”;
- (d) by deleting the words “beyond the period that the control measure in respect of which the order was made is in force” in subsection (5)(d) and substituting the words “in respect of any of the alternative arrangements prescribed in the order”; and

(e) by deleting the definition of “control measure” in subsection (7).

### **Repeal and re-enactment of section 36**

5 **13.** Section 36 of the principal Act is repealed and the following section substituted therefor:

#### **“Application**

**36.—(1)** This Part applies to a case where —

10 (a) parties (none of whom is a prescribed person) entered into a contract (called in this Part the affected contract) that —

(i) falls within such description of contracts as may be prescribed;

(ii) is in force during the prescribed period (or any part of it); and

15 (iii) is, on or after 1 February 2020 and before the expiry of the prescribed period, affected in the prescribed manner 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, where such delay or breach —

(A) occurs on or after 1 February 2020 and before the expiry of the prescribed period; and

20 (B) is to a material extent caused by a COVID-19 event; and

25 (b) other prescribed conditions are satisfied.

(2) This Part does not apply to such circumstances as may be prescribed by regulations made under section 39.”.

### Amendment of section 37

14. Section 37 of the principal Act is amended —

(a) by deleting the words “A party to an affected contract” in subsection (1) and substituting the words “Subject to subsection (1A), a party to an affected contract (called in this section and section 37A *A*)”;

(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) *A* may not apply to the Registrar to appoint an assessor to make a determination under subsection (1) if, in relation to the prescribed obligation or prescribed right under the contract in question, or the prescribed term in the contract in question —

(a) proceedings before a court have commenced against *A*;

(b) arbitral proceedings under the Arbitration Act (Cap. 10) have commenced against *A*;

(c) an adjudication application has been made under section 13(1) of the Building and Construction Industry Security of Payment Act (Cap. 30B) (called in this Part SOPA) for a claim against *A*; or

(d) a judgment, an arbitral award or a determination, in relation to proceedings or an application mentioned in paragraph (a), (b) or (c), has been given or made.”;

(c) by inserting, immediately after subsection (2), the following subsections:

“(2A) The Registrar may, for the purposes of deciding whether to appoint an assessor to determine an application, request *A* to provide further information within the time specified by the Registrar.

(2B) The Registrar may reject an application if —

(a) the application is incomplete or otherwise not made in accordance with subsection (1);

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(b) *A* fails to satisfy the Registrar that subsection (2) is complied with;

(c) *A* fails to comply with the Registrar's request under subsection (2A);

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(d) the Registrar reasonably suspects that any information provided by *A* to the Registrar is false or misleading in a material particular; or

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(e) it appears to the Registrar, from the application or any information provided by *A* in subsection (2A), that —

(i) the application is made in breach of subsection (1A);

(ii) the contract in question does not satisfy section 36(1)(a)(i), (ii) or (iii);

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(iii) one or more of the parties to the contract in question is a prescribed person mentioned in section 36(1)(a);

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(iv) the case does not satisfy the prescribed conditions under section 36(1)(b);

(v) the case comes within the circumstances mentioned in section 36(2);

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(vi) the application does not disclose —

(A) any prescribed obligation or prescribed right under the contract in question; or

(B) any prescribed term in the contract in question; or

(vii) the application is frivolous or an abuse of process.”; and

(d) by deleting the words “If the Registrar is satisfied that the application is made and served in accordance with subsections (1) and (2),” in subsection (3) and substituting the words “Unless the Registrar rejects an application under subsection (2B),”.

### **New section 37A**

**15.** The principal Act is amended by inserting, immediately after section 37, the following section:

#### **“Moratorium**

**37A.**—(1) Where *A* has made and served an application in accordance with section 37(1) and (2), then despite any law or anything in the affected contract, another party to the affected contract may not take any action described in subsection (2) in relation to the prescribed obligation or prescribed right under the contract, or the prescribed term in the contract, that is the subject of the application, during the moratorium period described in subsection (3).

(2) The actions mentioned in subsection (1) are —

(a) the commencement or continuation of an action in a court against *A* or *A*’s guarantor or surety;

(b) the commencement or continuation of arbitral proceedings under the Arbitration Act against *A* or *A*’s guarantor or surety;

(c) the making or continuation of an adjudication application under section 13(1) of SOPA for a claim against *A*;

(d) the enforcement of any security over any immovable property;

- (e) the enforcement of any security over any movable property used for the purpose of a trade, business or profession;
- 5 (f) 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 *A* or *A*'s guarantor or surety;
- 10 (g) the making of an application for a judicial management order in relation to *A* or *A*'s guarantor or surety;
- (h) the making of an application for the winding up of *A* or *A*'s guarantor or surety;
- 15 (i) the making of a bankruptcy application against *A* or *A*'s guarantor or surety;
- (j) the appointment of a receiver or manager over any property or undertaking of *A* or *A*'s guarantor or surety;
- 20 (k) the commencement or levying of execution, distress or other legal process against any property of *A* or *A*'s guarantor or surety, except with the leave of the court and subject to such terms as the court imposes;
- 25 (l) the repossession of any goods under any chattels leasing agreement, being goods used for the purpose of a trade, business or profession; and
- (m) such other action as may be prescribed.

(3) The moratorium period mentioned in subsection (1) starts on the date of service by *A* of the application in accordance with section 37(2) and ends on the earliest of the following:

- 30 (a) the withdrawal by *A* of *A*'s application;
- (b) the rejection of the application by the Registrar under section 37(2B);

(c) the date a determination is made under section 38(1)(a) that the case is not one to which this Part applies;

(d) the date any determination is made under section 38(1)(b). 5

(4) Sections 5(5), (7), (9), (10) and (11) and 8, and the regulations under section 5(12), apply with the necessary modifications in relation to an action mentioned in subsection (2) as they apply in relation to an action mentioned in section 5(3), and for this purpose — 10

(a) a reference to the subject inability is to the prescribed obligation or prescribed right under the affected contract, or the prescribed term in the affected contract, that is the subject of the application;

(b) a reference to the period mentioned in section 5(7) is to the moratorium period; 15

(c) a reference to section 5(2) is to subsection (1);

(d) a reference to regulations made under section 19 is to regulations made under section 39; and

(e) a reference in section 5(7) to a period of limitation prescribed by any law is, in the case of an action mentioned in subsection (2)(c), to the period under section 13(3)(a) of SOPA within which an adjudication application must be made. 20

(5) Where an adjudication application under section 13(1) of SOPA is made or continued in breach of subsection (1), then either of the following (as applicable) applies: 25

(a) the authorised nominating body (as defined in section 2 of SOPA) must not take any further action on the adjudication application; 30

(b) the adjudicator (as defined in section 2 of SOPA) must terminate the adjudication proceedings.

(6) Any of the following, namely:

(a) proceedings against *A* or *A*'s guarantor or surety before a court;

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(b) arbitral proceedings against *A* or *A*'s guarantor or surety under the Arbitration Act;

(c) an adjudication application against *A* under section 13(1) of SOPA;

(d) such other proceedings as may be prescribed,

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in relation to the prescribed obligation or prescribed right under the affected contract, or the prescribed term in the affected contract, that is the subject of the application under section 37(1), that are pending at the start of the moratorium period, must be stayed on the lodgment by *A* of a copy of the application with the court, arbitral tribunal, authorised nominating body or adjudicator as defined in SOPA, or other person or body before which the proceedings are brought, until the end of the moratorium period.

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(7) Any period prescribed in SOPA for the carrying out of an act in relation to an adjudication application under section 13(1) of SOPA that is pending at the start of the moratorium period, is extended by a period equal to the moratorium period.”.

### **Amendment of section 38**

**16.** Section 38(1) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph:

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“(b) in a case to which this Part applies, also make a determination —

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(i) whether it is just and equitable in the circumstances of the case for a prescribed obligation or prescribed right under the affected contract to be performed or exercised in a manner other than in accordance with the terms of the contract, and if so that the obligation or right is to be performed or



exercised in the manner determined by the assessor; or

- (ii) whether it is just and equitable in the circumstances of the case for a prescribed term in the affected contract to be varied, or for a party to the contract to be released or discharged from that term, and if so that the term is to be varied in the manner determined by the assessor, or the party is to be released or discharged from that term, as the case may be.”.

### **New sections 38A to 38D**

17. The principal Act is amended by inserting, immediately after section 38, the following sections:

#### **“Subsequent determinations**

**38A.**—(1) After an assessor has made a determination under section 38(1), the assessor or another assessor may, either on his or her own motion or on the application of one or both of the parties to the determination —

- (a) vary or replace the determination if there has been a material change in the circumstances after it has been made and it is just and equitable for the variation or replacement to be made; or
- (b) require the parties to attend before the assessor after a specified time for a further review of the matter and to make any additional determination as is appropriate.

(2) In considering whether it is just and equitable for a variation or replacement of the determination to be made under subsection (1)(a), or whether to make any additional determination under subsection (1)(b), the assessor must take into account the following factors:

- (a) whether there has been any undue delay by the applicant in making the application for a subsequent determination under subsection (1);

(b) whether any party to the affected contract has taken any action in reliance on the determination;

(c) whether, in relation to the prescribed obligation or prescribed right under the affected contract, or the prescribed term in the affected contract —

(i) proceedings before a court have commenced;

(ii) arbitral proceedings under the Arbitration Act have commenced; or

(iii) an adjudication application has been made under section 13(1) of SOPA,

and if so, the stage of the proceedings or application mentioned in sub-paragraph (i), (ii) or (iii).

(3) No action may be taken under subsection (1) if a judgment, an arbitral award or a determination has been given or made in relation to any proceedings or application mentioned in subsection (2)(c)(i), (ii) or (iii).

(4) Section 38 applies with the necessary modifications to any determination made under subsection (1).

### **Effect of Part 8 determination on operation of Building and Construction Industry Security of Payment Act**

**38B.**—(1) Where a determination has been made under section 38 or 38A (called in this section the Part 8 determination) to modify the manner in which an obligation or a right under a supply contract is to be performed or exercised, or to vary, or release or discharge a party from, a term in a supply contract, then the contract so adjusted is considered the contract for the purpose of taking any action (including determining an adjudication application or adjudication review application) in relation to it under SOPA.

(2) When applying a provision of SOPA for the purpose mentioned in subsection (1) —

(a) a reference to a contract is to the contract so adjusted; and

(b) a reference to a term or provision of a contract is (if that term or provision has been varied by the Part 8 determination) to the varied term or provision.

(3) Accordingly, where the respondent has been released or discharged by the Part 8 determination from a term or provision of the supply contract, then, in determining for the purpose of SOPA the entitlement of the claimant to any payment from the respondent under the contract, that term or provision is disregarded to the extent the respondent has been so released or discharged.

(4) An adjudication application or adjudication review application made in a case mentioned in subsection (1) must be accompanied by a copy of the Part 8 determination.

(5) For the purpose of determining if a claimant under the supply contract is entitled to make an adjudication application under section 13 of SOPA after the Part 8 determination, in relation to a payment claim that was made before the date of the Part 8 determination —

(a) the question of whether the payment claim was made and served in accordance with the provisions of SOPA is to be determined by reference to the contract before it was adjusted by the Part 8 determination; and

(b) the due date of the claimed amount under section 12(3)(a) of SOPA is, if it was adjusted by the Part 8 determination, the due date before the adjustment.

(6) For the purpose of determining if an objection may be included in an adjudication response to an adjudication application mentioned in subsection (5), a reference to the relevant due date in section 15(3)(b) and (3A)(b) of SOPA is, if it was adjusted by the Part 8 determination, the due date before the adjustment.

(7) However —

(a) an adjudicator when determining an adjudication application mentioned in subsection (5); or

(b) a review adjudicator when determining an adjudication review application arising from a determination mentioned in paragraph (a),

5 must disregard any payment claim, objection or any other information or document provided by a party, to the extent it is inconsistent with the contract as adjusted by the Part 8 determination.

(8) This section applies despite any provision of SOPA or other written law.

10 (9) In this section and section 38C —

“adjudication application” means an adjudication application made under section 13 of SOPA;

“adjudication review application” means an adjudication review application made under section 18 of SOPA;

15 “adjudicator” means an adjudicator appointed under section 14(3) of SOPA to determine an adjudication application, and includes a replacement adjudicator appointed under section 14A(3) of SOPA;

20 “authorised nominating body”, “claimant”, “payment claim”, “respondent” and “supply contract” have the meanings given by section 2 of SOPA;

25 “review adjudicator” means a review adjudicator appointed under section 18(5)(b) of SOPA, and includes a panel of review adjudicators appointed under that provision, and a replacement review adjudicator or replacement member of a panel of review adjudicators appointed under section 18A(3) of SOPA.

30 **Section 38 powers may be exercised in adjudication, etc., under Building and Construction Industry Security of Payment Act**

**38C.**—(1) This section applies where a respondent, in objections raised under section 11(2) of SOPA, in the adjudication response under section 15 of SOPA, or during the

determination of an adjudication application by an adjudicator under section 17 of SOPA —

- (a) stated that this Part applies to the case; and
- (b) provided all of the information required to be set out in an application under section 37(1). 5

(2) An adjudicator may, when determining the adjudication application under section 17 of SOPA, also exercise the powers mentioned in section 38(1)(a) and (b) as if he or she were an assessor determining an application under section 37, and section 38(2) applies with the necessary modifications to the exercise of those powers. 10

(3) A review adjudicator may, when reviewing a determination of an adjudicator under section 19 of SOPA —

- (a) review any determination of the adjudicator under subsection (2); and 15
- (b) substitute a determination mentioned in paragraph (a) with his or her own determination.

(4) The Minister charged with the responsibility for SOPA may make regulations for the purpose of carrying out or giving effect to this section, and those regulations may in particular provide for the following: 20

- (a) the forms to be used and the information or documents to be furnished;
- (b) the manner in which an adjudicator or a review adjudicator is to exercise or perform the duties or functions of an adjudicator or a review adjudicator, as the case may be; 25
- (c) a modification of a provision of SOPA or its regulations as is necessary or expedient for carrying out subsection (2) or (3). 30

(5) This section applies despite any provision of SOPA or other written law.

### **Effect of determination on court or tribunal proceedings**

5 **38D.** In any proceeding before a court or an arbitral tribunal in relation to any matter arising under or by virtue of a contract in relation to which a determination is made under section 38 or a subsequent determination is made under section 38A (as the case may be), the court or arbitral tribunal may make such orders as it considers appropriate, having regard to the determination and any action taken by a party to the contract in good faith and in reliance on the determination.”.

### 10 **New Part 9**

**18.** The principal Act is amended by inserting, immediately after section 39, the following Part:

#### “PART 9

#### TEMPORARY MEASURES FOR CONDUCT OF 15 COLLECTIVE SALE OF PROPERTY

#### **Power to modify Land Titles (Strata) Act for collective sale of property affected by COVID-19 event**

20 **40.—**(1) The Minister may, by order in the *Gazette*, make provision for the purpose of applying a modified provision of a Schedule to the Land Titles (Strata) Act (Cap. 158) (called in this Part the LTSA) to a case mentioned in subsection (2), in relation to which an application to the Minister made in accordance with the order to apply the modified provision is approved by the Minister.

25 (2) Subsection (1) applies to a case where —

- (a) a collective sale committee was constituted before 25 March 2020 for the purpose of a collective sale of property under Part VA of the LTSA;
  - (b) a requirement specified in the order of a Schedule to the LTSA for the collective sale was not satisfied (whether before, on or after the date of commencement of section 18 of the COVID-19 (Temporary Measures) (Amendment No. 2) Act 2020) or is unlikely to be satisfied; and
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- (c) the requirement was not or is unlikely to be satisfied because it was or will be inexpedient or impracticable to carry out any act necessary for the requirement to be satisfied in view of a COVID-19 event.

(3) The order in subsection (1) may in particular make provision for the following: 5

- (a) to extend or replace a period of time in a Schedule to the LTSA for a case;
- (b) to disapply a provision or a part of a provision of a Schedule to the LTSA to or in relation to a person, to apply a provision or a part of a provision of the Schedule to the LTSA (with or without modification) to or in relation to a person, or both; 10
- (c) to provide for the form, manner and time for making an application to the Minister mentioned in subsection (1); 15
- (d) to require a notice of such application, and a notice of the outcome of such application, to be served on prescribed persons;
- (e) to provide for the right of a prescribed person to be heard by the Minister in relation to such application; 20
- (f) to provide for the manner of serving any document and when it is deemed served;
- (g) to provide for any other matter necessary or convenient to be prescribed for carrying out the purpose in subsection (1). 25

(4) Despite anything in any written law, in a case for which the Minister has approved the application of a modified provision of a Schedule to the LTSA, the LTSA is to be read with the modifications applicable to that case that are made by the order in subsection (1). 30

(5) In this section, “collective sale committee” means a collective sale committee constituted under section 84A(1A)

of the LTSA, including that provision as applied by section 84D(9), 84E(15) or 84FA(16) of the LTSA.”.

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## EXPLANATORY STATEMENT

This Bill seeks to amend the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) for the following main purposes:

- (a) to allow the Registrar of assessors and the Registrar of rental relief assessors (each called the Registrar) to reject applications for an assessor’s determination under Parts 2, 2A and 8 on specified grounds;
- (b) to set out additional determinations that a rental relief assessor may make under Part 2A;
- (c) to allow alternative arrangements for meetings to be prescribed under Part 4 independently of the duration of a control order under Part 7 or other measures under the Infectious Diseases Act (Cap. 137) if the Minister considers it necessary or expedient in order to limit or prevent the spread of COVID-19;
- (d) to provide for a moratorium on the taking of certain actions when an application for an assessor’s determination under Part 8 is made and served;
- (e) to provide for the effect of an assessor’s determination under Part 8 on an adjudication on the same matter under the Building and Construction Industry Security of Payment Act (Cap. 30B), and to empower an adjudicator, a review adjudicator, or a panel of review adjudicators, adjudicating a dispute under that Act to make the same determinations as those that an assessor may make under Part 8;
- (f) to provide for the prescribing of temporary measures for the conduct of certain collective sales of properties under the Land Titles (Strata) Act (Cap. 158) affected by a COVID-19 event.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 5A (Relief for inability to exercise right under scheduled contract) to provide that it applies to an inability to exercise a right in the contract on or after 1 February 2020, instead of the date of commencement of section 5 of the COVID-19 (Temporary Measures) (Amendment) Act 2020 (which is 20 June 2020).

Clause 3 amends section 7A (Relief from late payment interest or other charge) —



- (a) to provide that the inability to pay any money under a prescribed scheduled contract for the relief under the section to apply may be at any time on or after 1 February 2020;
- (b) to provide that the manner in which the maximum prescribed rate of interest that a debtor is liable to pay under a prescribed scheduled contract may also be prescribed; and
- (c) to clarify that a party to a scheduled contract who has served a notification for relief before 31 July 2020 (the date of commencement of section 7A) for the purpose of section 5, need not serve another notification for relief for the purpose of seeking relief under section 7A.

Clause 4 amends section 7B (Holding over after termination or expiry of lease or licence of non-residential immovable property) —

- (a) to provide that different maximum amounts that a lessee or licensee is liable for holding over after a lease or licence is terminated or has expired, may be prescribed for different circumstances, and that a zero amount may be prescribed; and
- (b) to clarify that a party to a scheduled contract who has served a notification for relief before 31 July 2020 (the date of commencement of section 7B) for the purposes of section 5, need not serve another notification for relief for the purpose of seeking relief under section 7B.

Clause 5 amends section 12 (Application for assessor's determination) to empower the Registrar, when deciding whether to appoint an assessor to determine an application, to request the applicant to provide further information within a specified time. The section is further amended to enable the Registrar to reject an application for an assessor's determination on specified grounds.

Clause 6 amends section 13 (Assessor's determination) to provide that, on an application for an assessor's determination under section 5A, the assessor must make a determination whether the case in question is one to which section 5A applies.

Clause 7 amends section 19J (Additional rental relief) to provide that the prescribed period for which rent is waived under the section is not a period additional to that for which rent is waived under section 19H. The periods are the same for both.

Clause 8 repeals and re-enacts section 19M (Application for determination as to tenant's entitlement to rental relief or additional rental relief).

The new section 19M allows both a landlord or a tenant to apply to the Registrar to appoint a rental relief assessor to make a determination on the following:

- (a) the actual amount of rent under the lease agreement;
- (b) the actual amount of any component of the formula used to compute the prescribed amount of rent that is waived under section 19H or 19J in the particular case.

The new section 19M also empowers the Registrar, when deciding whether to appoint a rental relief assessor to determine an application, to request the applicant to provide further information within a specified time. Further, the new section 19M enables the Registrar to reject an application on specified grounds.

Clause 9 amends section 19N (Assessor’s determination) to include the determinations that a rental relief assessor may make on an application by a landlord or a tenant mentioned in the new section 19M.

Clause 10 makes amendments to section 19O (Reversal or reduction of additional rental relief) that are consequential to the new section 19M.

Clause 11 amends section 19X (Regulations for Part 2A) —

- (a) to provide that regulations may prescribe different prescribed periods for the waiver of rent under sections 19H and 19J, for different types of prescribed property, or for different parts of a prescribed property; and
- (b) to allow regulations made to prescribe the amounts of rent waived under sections 19H and 19J to be backdated, and (in relation to a case where such regulations apply retrospectively) to provide for the recovery of any money paid or withheld in reliance on the law in force before the date the retrospective regulations were made.

Clause 12 amends section 27 (Alternative arrangements for meetings) to remove the requirement for the existence of a control measure (which includes a control order under Part 7 and certain measures under the Infectious Diseases Act) in order for alternative arrangements to be prescribed for the meetings or classes of meetings for which personal attendance is provided in any written law or legal instrument. Instead, the requirement now is that the Minister considers that the alternative arrangements would be necessary or expedient in order to limit or prevent the spread of COVID-19. The definition of “control measure” and other references to “control measure” in the section are also deleted.

Clause 13 repeals and re-enacts section 36 (Application of Part 8). The new section 36 provides that Part 8 now applies to a case where —

- (a) parties (none of whom is a prescribed person) entered into a contract that (called the affected contract) —
  - (i) falls within such description of contracts as may be prescribed;
  - (ii) is in force during the prescribed period (or any part of it); and

(iii) is, on or after 1 February 2020 and before the expiry of the prescribed period, affected in the prescribed manner 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, where such delay or breach —

(A) occurs on or after 1 February 2020 and before the expiry of the prescribed period; and

(B) is to a material extent caused by a COVID-19 event; and

(b) other prescribed conditions are satisfied.

The new section 36 further disapplies Part 8 to any circumstances specified in regulations made under section 39.

Clause 14 amends section 37 (Application for determination) —

(a) to provide the circumstances in which a party to an affected contract may not apply to the Registrar to appoint an assessor to make a determination;

(b) to empower the Registrar, when deciding whether to appoint an assessor to determine an application, to request the applicant to provide further information within a specified time; and

(c) to enable the Registrar to reject an application for a determination on specified grounds.

Clause 15 inserts a new section 37A.

The new section 37A provides for a moratorium on certain actions in relation to the prescribed obligation or prescribed right under the affected contract, or the prescribed term in the affected contract, that is the subject of an application under section 38, after the application has been made and served in accordance with section 37. The actions covered by the moratorium includes the continuation of any action that commenced after an application for a determination has been made under section 37(1), but before the application is served under section 37(2).

Clause 16 amends section 38 (Determination) to provide that an assessor may make a determination —

(a) whether it is just and equitable in the circumstances of the case for a prescribed obligation or prescribed right under the affected contract to be performed or exercised in a manner other than in accordance with the terms of the contract, and if so that the obligation or right is to be performed or exercised in the manner determined by the assessor; or

- (b) whether it is just and equitable in the circumstances of the case for a prescribed term in the affected contract to be varied, or for a party to the contract to be released or discharged from that term, and if so that the term is to be varied in the manner determined by the assessor, or the party is to be released or discharged from that term, as the case may be.

Clause 17 inserts new sections 38A to 38D.

The new section 38A enables an assessor to make subsequent determinations after an initial determination has been made under section 38. A subsequent determination may vary or replace the initial determination, or require parties to attend before the assessor for a further review of the matter and to make any additional determination, or both. However, an assessor may not make any subsequent determinations if a judgment or an arbitral award, or a determination under the Building and Construction Industry Security of Payment Act (called SOPA), in relation to the prescribed obligation or prescribed right under the affected contract, or the prescribed term in the affected contract, has been given or made on or after the initial determination.

The new section 38B provides for the effect of a determination under section 38 or 38A that modified the manner in which a prescribed obligation or prescribed right under a supply contract is to be performed or exercised, or varied, or released or discharged a party from, a term in a supply contract, on actions that may be taken in relation to the same supply contract under SOPA, including any adjudication or review adjudication of the contract.

First, the contract that is adjusted in accordance with the determination is treated as the contract for the purposes of such action.

Second, an application for adjudication under SOPA may still be made after a determination under section 38, pursuant to a payment claim made before that determination. However, the adjudication or subsequent review adjudication must disregard the payment claim or any document provided by a party to the extent it is inconsistent with the contract as adjusted by the determination.

The new section 38C allows an adjudicator, a review adjudicator, or a panel of review adjudicators under SOPA, when determining an adjudication application or a review adjudication application, to exercise the powers in section 38(1)(a) and (b) as if he or she were an assessor determining an application under section 37.

The new section 38D provides that in any proceedings in relation to a matter concerning a contract in relation to which a determination under section 38 or 38A has been made, the court or arbitral tribunal may make orders having regard to the determination and any action taken in good faith and in reliance on the determination.

Clause 18 inserts a new Part 9 which provides for temporary measures for the conduct of a collective sale of property under the Land Titles (Strata) Act (called the LTSA) affected by a COVID-19 event.

The new section 40 provides that the Minister may, by order in the *Gazette*, make provision for the purpose of applying a modified provision of a Schedule to the LTSA to a specified case, in relation to which an application made to the Minister in accordance with the order to apply the modified provision is approved by the Minister.

A specified case is one where —

- (a) a collective sale committee was constituted before 25 March 2020;
- (b) a requirement specified in the order of a Schedule to the LTSA for the collective sale was not satisfied (whether before, on or after the date of commencement of the new Part 9) or is unlikely to be satisfied; and
- (c) the requirement was not or is unlikely to be satisfied because it was or will be inexpedient or impracticable to carry out any act necessary for the requirement to be satisfied in view of a COVID-19 event.

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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