

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

Bill No. 10/2021 [Urgent Bill].

Read the first time on 5 April 2021.

A BILL

intituled

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 2021.

(2) Section 2 comes into operation on 19 April 2021.

5 (3) Sections 3 to 9 come into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 1

2. Section 1 of the COVID-19 (Temporary Measures) Act 2020 (called in this Act the principal Act) is amended by deleting
10 subsection (2) and substituting the following subsections:

“(2) Part 3 continues in force for a period of one year beginning on the date of its commencement.

(2A) Parts 1 (except section 2) and 2 remain in force until the end of 19 April 2022.”.

15 Amendment of section 39I

3. Section 39I of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) Despite subsection (2), the original delivery date may be
20 extended for a period exceeding 122 days in accordance with subsections (4) and (5), but only after the developer has extended the original delivery date by a total period of 122 days under subsection (1).”.

Repeal and re-enactment of section 39K

4. Section 39K of the principal Act is repealed and the following
25 section substituted therefor:

“Reimbursement by developer for costs of purchaser in extension period

30 **39K.**—(1) Despite any law or anything in the affected agreement, where the delivery date is extended under section 39I(1) one or more times, the developer —

- (a) is only liable to the purchaser for the qualifying costs incurred by the purchaser in relation to those extensions, up to the prescribed amount; and
- (b) is not liable for any other cost, expense, loss or other sum that the developer would, but for the extension or extensions, be liable to pay under any law or the affected agreement for failing to deliver possession of the unit or units in question on or before the original delivery date. 5
- (2) Despite any law or anything in the affected agreement, where the delivery date is extended under section 39I(3), the developer — 10
- (a) is only liable to the purchaser for the qualifying costs incurred by the purchaser in relation to that extension, up to the prescribed amount; and 15
- (b) is not liable for any other cost, expense, loss or other sum that the developer would, but for that extension, be liable to pay under any law or the affected agreement for failing to deliver possession of the unit or units in question on or before the delivery date as extended under section 39I(1). 20
- (3) The purchaser claiming reimbursement from the developer of the qualifying costs incurred by the purchaser, as permitted under subsection (1)(a) or (2)(a), must do so —
- (a) in the prescribed form and manner; and 25
- (b) within the prescribed time.
- (4) A claim mentioned in subsection (3) must be accompanied by such information or document as may be prescribed.
- (5) Where the purchaser makes a claim mentioned in subsection (3), the purchaser may, after the prescribed time — 30
- (a) set off, against any instalment or other payment payable by the purchaser to the developer under the affected agreement, the amount that the developer must pay to the purchaser in respect of the claim

(to the extent that the developer has not paid such amount), being —

(i) where no application mentioned in section 39L(1)(b) is made in respect of the claim within the prescribed time mentioned in section 39N(1) — the amount claimed by the purchaser;

(ii) where an assessor makes a determination on an application mentioned in section 39L(1)(b) for the amount of reimbursement that the purchaser is entitled to claim from the developer under this section — the amount so determined by the assessor; or

(iii) where the purchaser and developer agree on the amount of reimbursement that the developer will pay the purchaser — the amount so agreed between the purchaser and developer; and

(b) take any action to recover from the developer, as a debt due to the purchaser, the amount in paragraph (a) that the developer must pay to the purchaser (to the extent that the developer has not paid that amount, and less any set-off effected by the purchaser under that paragraph).

(6) Section 39J does not apply to the taking of any action under subsection (5), in relation to a claim by a purchaser pursuant to subsection (1).

(7) For the purposes of this section —

(a) different amounts may be prescribed for subsections (1)(a) and (2)(a) for different extensions of the delivery date under section 39I(1) or (3);

(b) different forms and manners and different times may be prescribed in subsection (3) for different claims;

- (c) different information and documents may be prescribed in subsection (4) for different claims; and
- (d) different times may be prescribed in subsection (5) for different circumstances under which a set-off may be effected or an action to recover an amount may be taken.”.

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New section 39LA

5. The principal Act is amended by inserting, immediately after section 39L, the following section:

“Extension of time

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39LA.—(1) The Registrar of assessors may —

- (a) on his or her own initiative; or
- (b) on an application submitted to the Registrar of assessors by a developer or purchaser,

and on such terms as the Registrar of assessors thinks just, extend, or further extend, in a particular case, the period within which a person is required under this Part to do anything, except that the total period of all extensions must not exceed the prescribed period.

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(2) The Registrar of assessors may extend, or further extend, the period mentioned in subsection (1) even though the period has expired, but only if the extension or the application for the extension (as the case may be) is made within the prescribed period.

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(3) For the purposes of subsections (1) and (2), different periods may be prescribed for different time periods sought to be extended under this Part and in different circumstances.”.

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Repeal and re-enactment of section 39M

6. Section 39M of the principal Act is repealed and the following section substituted therefor:

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“Authorised nominating bodies

39M.—(1) The Minister must appoint one or more authorised nominating bodies for the purpose of providing assessors to hear and determine applications under section 39N(4).

5 (2) The assessors must satisfy the requirements prescribed for such assessors.”.

Amendment of section 39N

7. Section 39N of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

10 “(1A) For the purposes of subsection (1), different times, forms, manners and fees may be prescribed for different applications.”.

New sections 39OA to 39OG

15 **8.** The principal Act is amended by inserting, immediately after section 39O, the following sections:

“Subsequent determinations

39OA.—(1) After an assessor has made a determination under section 39O(1)(b) of an amount of reimbursement that the purchaser is entitled to claim from the developer under section 39K (called in this section the original determination), the assessor or another assessor may, either on his or her own motion or on the application of all or any of the persons to whom the assessor’s original determination relates, vary or replace the determination if —

25 (a) one of those persons adduces further information or documents after the original determination which would have had a material influence on the original determination but which could not have with reasonable diligence been obtained for use at the proceedings before the assessor; and

30 (b) it is fair and just for a variation or replacement of the original determination to be made under this subsection.

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

- (a) whether there has been any undue delay in the making of the application for a subsequent determination under subsection (1); 5
- (b) whether any person has taken any action in reliance on the original determination.

(3) Where a subsequent determination varies or replaces an original determination so as to increase the amount of reimbursement that the purchaser was entitled to claim from the developer under the original determination, then the purchaser may — 10

- (a) set off the amount of the increase against any instalment or other payment payable by the purchaser to the developer under the affected agreement; and 15
- (b) take any action to recover from the developer, as a debt due to the purchaser, the amount of the increase (less any such set-off), 20

and section 39J does not apply to the taking of any action under paragraph (a) or (b).

(4) Where —

- (a) a subsequent determination varies or replaces an original determination so as to reduce the amount of reimbursement that the purchaser was entitled to claim from the developer under the original determination; and 25

(b) the aggregate of the amount of set-off (if any) that the purchaser has effected under section 39K and the amount (if any) that the purchaser has recovered from the developer under that section, pursuant to the original determination, is in excess of the amount of the reimbursement that the developer is liable to pay the purchaser under the subsequent determination,

that excess amount is recoverable by the developer as a debt due from the purchaser.

No representation by advocate and solicitor

39OB. No developer or purchaser may be represented by an advocate and solicitor at proceedings before an assessor, except with the permission of the assessor.

Costs

39OC. A developer or purchaser must bear the developer's or purchaser's own costs for proceedings before an assessor.

Confidentiality of information and documents provided and proceedings

39OD.—(1) This section applies to the following information:

(a) any information or document that is provided by a person to another person, in accordance with a requirement under this Part;

(b) any statement or document submitted, created or made for the purposes of a proceeding before an assessor;

(c) any information (whether written or oral) that is disclosed in the course of the proceeding.

(2) A person must not disclose to any other person any information or document mentioned in subsection (1), except —

(a) with the consent of the person to whom the information or document relates;

- (b) to the extent that the information or document is already in the public domain;
- (c) to the extent that the disclosure is necessary for the purposes of, or in connection with, any proceedings before an assessor, a court or an arbitral tribunal; or
- (d) to the extent that the disclosure is required for any purpose under this Part.

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(3) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

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(4) Where there is a contravention of subsection (2), a person who has suffered loss or damage as a result of the contravention has a right of action against the person who contravenes that subsection.

(5) The types of relief that the court may grant in an action under subsection (4) include an injunction and damages.

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Registrar of assessors, Deputy Registrars of assessors and assessors treated as public servants

39OE. The Registrar of assessors, a Deputy Registrar of assessors or an assessor who, in the course of his or her duties under this Part, exercises any power as such, is treated as a public servant for the purposes of the Penal Code when exercising that power.

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Protection from liability

39OF. No liability shall lie against the Registrar of assessors, a Deputy Registrar of assessors or an assessor with respect to anything done or omitted to be done in good faith and with reasonable care in the discharge or purported discharge of their functions and duties under this Part.

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False declaration, etc.

39OG. A person who —

(a) makes any declaration or statement, or provides any information or document, under or for the purposes of this Part, that is false or misleading in a material particular; and

(b) knows or ought reasonably to know that, or is reckless as to whether, the declaration, statement, information or document is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.”.

Amendment of section 39P

9. Section 39P(2) of the principal Act is amended —

(a) by deleting paragraph (c) and substituting the following paragraph:

“(c) the manner in which the Registrar of assessors, a Deputy Registrar of assessors, an authorised nominating body or an assessor is to exercise his, her or its functions or perform his, her or its duties;”;

(b) by deleting the words “any document is to be filed or furnished” in paragraph (e) and substituting the words “any document, form or information, that is required by regulations made under this section to be submitted to or served on, any person”; and

(c) by deleting paragraph (f) and substituting the following paragraph:

“(f) any fee to be paid in respect of any application under this Part, and in respect of any fee to be paid for an application under section 39L(1)(b) or 39OA in

relation to an affected agreement, either or both of the following:

- (i) the apportionment of the fee between the developer and any one or more of the purchasers under the affected agreement; 5
- (ii) the recovery by a party that pays the fee (*A*) of the portion of the fee payable by another party (*B*), including but not limited to — 10
 - (A) setting off against any instalment or other payment payable, in relation to the affected agreement, by *A* to *B*; and 15
 - (B) recovering the portion of the fee payable by *B*, in whole or in part, as a debt due to *A*;

EXPLANATORY STATEMENT

This Bill seeks to amend the COVID-19 (Temporary Measures) Act 2020.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 1 to extend the validity of Parts 1 (except section 2) and 2 to 19 April 2022.

Clause 3 amends section 39I to provide that the developer may only extend the original delivery date for a period exceeding 122 days after the developer has extended the original delivery date by a total period of 122 days under section 39I(1).

Clause 4 repeals and re-enacts section 39K that provides for the liability of the developer to reimburse the purchaser for the qualifying costs incurred by the purchaser in relation to the extension of the delivery date under section 39I. The section further allows the purchaser to set off the amount of reimbursement against any instalment or other payment payable by the purchaser to the developer under the affected agreement. The amount which the developer must reimburse

the purchaser, less any such set-off, is recoverable by the purchaser from the developer as a debt due.

Clause 5 introduces a new section 39LA which empowers the Registrar of assessors, on his or her own initiative or on an application submitted to the Registrar of assessors by a developer or purchaser, to extend or further extend the period within which a person is required under Part 8C to do anything, except that the total period of all extensions must not exceed the prescribed period.

This power of the Registrar of assessors may be exercised even though the period to do that thing has expired if the extension, or the application for the extension (as the case may be) is made within the prescribed period. Different periods may be prescribed for different time periods sought to be extended under Part 8C and in different circumstances.

Clause 6 repeals and re-enacts section 39M to provide that the Minister is to appoint one or more authorised nominating bodies, for the purpose of providing assessors to hear and determine applications under section 39N(4). The assessors must satisfy the requirements prescribed for such assessors.

Clause 7 amends section 39N to clarify that different times, forms, manners and fees may be prescribed for different applications.

Clause 8 introduces 7 new sections (sections 39OA to 39OG) dealing with miscellaneous matters relating to proceedings before an assessor, including subsequent determinations and the confidentiality of information and documents.

Clause 9 amends section 39P to expand the regulations that the Minister may make to include the manner in which a Deputy Registrar of assessors or an authorised nominating body is to exercise his, her or its functions or perform his, her or its duties.

The clause further amends section 39P to clarify that the power of extension that can be prescribed under regulations made under section 39P should relate only to any document, form or information that is required by those regulations to be submitted to or served on any person.

Finally, clause 9 amends section 39P to provide for the making of regulations for fees for any application under the Part generally, and for the apportionment of a fee paid for an application under section 39L(1)(b) or 39OA between the developer and one or more of the purchasers under the affected agreement and for the recovery by a party of the portion of the fee payable by another party.

EXPENDITURE OF PUBLIC MONEY

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