COVID-19: WHAT DOES SINGAPORE'S RESPONSE TO THE GLOBAL PANDEMIC MEAN FOR BUSINESSES IN SINGAPORE?

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THE IMPACT OF COVID-19 ON BUSINESSES

The impact of COVID-19 has been sharp and swift — the effect has been felt in most industries around the world. Singapore, while leading the pack in its response to COVID-19, has not been immune to the far-reaching impact on its business. In particular, there looks to be both an immediate and lingering impression on the retail, maritime, aviation, entertainment, and tourism sectors.

The Singapore government today announced a number of measures to try to mitigate the economic impact of COVID-19. [1] While those measures will go some way to 'softening the landing' for businesses in Singapore impacted by COVID-19, there is nevertheless expected to be a number of issues that will continue to arise.

Below is a quick summary, but by no means a complete list, of some of the issues that we have seen arise for businesses based in (or with operations in) Singapore.

FORCE MAJEURE

Much has been written about force majeure clauses since the outbreak of COVID-19. [2] Many businesses in Singapore are asking whether they can rely on force majeure as a result of: (i) the World Health Organization's declaration of COVID-19 as a global health emergency and (ii) the Singapore government's raising of the Disease Outbreak Response System Condition (or 'DORSCON', in short) level to orange.

Typically, where included in the relevant transaction documents, force majeure clauses are drafted such that they only apply to events that cause 'disruption', 'obstruction', or 'prevention' and not events that cause inconvenience or price increase. Even in circumstances where an express force majeure clause is not written into a contract, we have seen instances of parties relying on COVID-19 to avoid fulfilling obligations under contracts. Historically, where a contract does not provide for force majeure, a party will typically only be able to rely on the principle of frustration to avoid performing the contract. Generally, frustration of a contract is hard to prove and is rarely used. That said, given the unprecedented impact and government response to COVID-19, it remains to be seen whether businesses might have more success relying on frustration as a basis to avoid a contract.

'BUSINESS INTERRUPTION' INSURANCE

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Some businesses have started to make enquiries about the ability to claim coverage for 'business interruption' under commercial property insurance policies as a result of some of the measures taken by the Singapore government in response to COVID-19. As noted on the K&L Gates HUB, 'policyholders should not automatically accept the conclusions of some insurer-oriented commentary suggesting that coverage is simply not available for COVID-19 losses.' [3] In certain circumstances, an insured might be able to obtain coverage for lost profits, payroll, and other expenses as a result of government action that impacts business.

Naturally, there is no 'one-size-fits-all' approach to whether an insurance policy is engaged as a result of measures taken by government authorities. Again, as noted on the K&L Gates HUB: 'Businesses should consider their specific risk scenario and whether their business interruption insurance can assist as the situation continues to evolve. Close attention should be paid to relevant exclusions and extensions in your specific policy wording.' [4]

SOLVENCY ISSUES

Naturally, one of the concerns for businesses during this time is how to keep the lights on. Some countries, such as Australia, have rapidly introduced changes to legislation which provide various protections for businesses and their directors during the COVID-19 crisis. [5]

Singapore has not, as yet, introduced any changes to its statutory regime in response to COVID-19. Nevertheless, given the dramatic effect of COVID-19 on some businesses, enquiries as to how businesses might avail themselves of the various restructuring protections offered by Singapore's insolvency framework have begun to increase and likely will continue to do so as the fallout from the global spread of COVID-19 continues.

JOBS SUPPORT SCHEME ('JSS') AND THE ENHANCED JOBS SUPPORT SCHEME ('EJSS')

The JSS was launched in the Budget 2020 to help enterprises retain their local employees (being Singapore citizens and permanent residents) ('Local Employees') during this period of economic uncertainty. All active employers, with the exception of government organisations (local and foreign) and representative offices, are eligible for the JSS.

All employers will benefit from the JSS which will be extended to cover nine months of wages (up from three months). This will be paid in two additional tranches (see Table below) with the intention of helping employers retain their Local Employees.

	JSS will cover wages paid in:	**CPF contributions for the relevant months must be made by:**	**JSS will provide support (the 'Base Support') of:**	**JSS will be paid out by:**
Tranche 1 (Enhanced)	October–December 2019	14 February 2020	25% of the first SGD4,600 of gross monthly wages per Local Employee	End – May 2020
Tranche 2 (New)	February–April 2020	14 May 2020		End – July 2020

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Tranche 3 (New)	May–July 2020	14 August 2020		End – October 2020

Some sectors which have been particularly impacted by COVID-19 (such as tourism, aviation, and food services) have received additional support under the EJSS. Those businesses will receive 50–75% of the first SGD4,600 of gross monthly wages per Local Employee (includes the Base Support).

Employers do not need to apply for the JSS or the EJSS. The grant will be computed based on CPF contribution data. Employers eligible for the additional tiers of support will be informed closer to the date of the first payout.

NOTES

[1] https://www.straitstimes.com/politics/151b-boost-to-enhanced-jobs-support-scheme-amid-covid-19-outbreak-government-to-subsidise
[2] *See, e.g.,* http://www.klgateshub.com/details/?pub=The-Legal-Consequences-of-COVID-19-on-Your-Contracts-Force-Majeure-in-Different-Jurisdictions-and-Industries-and-Some-Practical-Guidance-03-02-2020
[3] http://www.klgateshub.com/details/?pub=Government-Imposed-COVID-19-Restrictions-May-Trigger-Insurance-Coverage-03-24-2020
[4] http://www.klgateshub.com/details/?pub=COVID-19-How-Insurance-Can-Help-Mitigate-Business-Losses-through-the-Crisis-03-18-2020
[5] http://www.klgateshub.com/details/?pub=COVID-19-Australia-Temporary-Changes-to-Insolvency-Laws-to-Support-Businesses-During-Coronavirus-Crisis-03-23-2020

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