

Keeping you up to date Coronavirus: Overview of the COVID-19 (Miscellaneous Provisions) Act 2020 Mauritius

Note: This is an introduction to the COVID-19 (Miscellaneous Provisions) Act 2020 (the COVID-19 Act).

The purpose of this introduction guide is to provide an overview on the COVID-19 Act and to highlight the major provisions. It is not meant to be comprehensive. In spite of the sincere efforts made to ensure the accuracy of this guide, no legal advice is being tendered and we shall not accept any liability for any mistakes, errors and/or omission contained herein. No reliance should be placed on this guide, and any person should consult the original Act and/or seek advice from a legal practitioner in relation to the COVID-19 Act.





1. Introduction

- 1.1. The COVID-19 Act has been passed in the Mauritian Assembly on 15 May 2020 and gazetted in the Government Gazette of Mauritius No. 57 of 16 May 2020 to amend a number of enactments to cater for the impact of COVID-19 for matters connected, consequential or related thereto.
- 1.2. Wherever reference shall be made to the “COVID-19 period” throughout this present Guide, same shall refer to the “**COVID-19 period**” which is now defined, through the amendment brought by the COVID-19 Act to the **Interpretation and General Clauses Act 1974**, which is the enactment that provides for the construction and interpretation of other legislative instruments, as well as other related matters. As such, “**COVID-19 period**” is defined as the period starting on 23 March 2020 and ending on 1 June 2020 or ending on such later date as the Prime Minister may, by regulations, prescribe.
- 1.3. The present guide will focus on the major changes brought about to different enactments and sectors; namely:
 - 1.3.1. **Employment;**
 - 1.3.2. **Banking;**
 - 1.3.3. **Income Tax;**
 - 1.3.4. **Corporate;**
 - 1.3.5. **Insolvency;**
 - 1.3.6. **Customs;**
 - 1.3.7. **Environment Protection;**
 - 1.3.8. **Tourism;**
 - 1.3.9. **Landlord and Tenant; and**
 - 1.3.10. **some Miscellaneous provisions.**
- 1.4. Different operational dates apply to each amended enactment.

2. Employment

Note: Where we refer to “worker” in this part, this relates to a provision only applicable to “workers” as defined under the Workers’ Rights Act 2019 (the “**WRA 2019**”) and earning up to MUR 50,000 as basic monthly salary and where we refer to “employee” this means that the provision relates both to a worker and to someone earning more than MUR 50,000 as basic monthly salary and who is availed only of some specific protection under the WRA 2019 (save for specified exclusions set out in the WRA 2019 i.e. for migrant or non-citizen employees).

The new provisions of the WRA 2019 which became effective as from 23 March 2020 are as follows:

- 2.1. Both a worker and an employee may be requested to work from home, as seen in paragraph 2.2 below. An **employee who is requested to work from home** is availed of the following protections under the WRA 2019: sections 5 (discrimination in employment and occupation), 26 (equal remuneration for work of equal value), 32 (payment of remuneration in other specific circumstances), 33 (payment of additional remuneration), 34 (restriction on deductions), 49 (Juror’s leave), 50 (leave to participate in international sports events), 52 (maternity leave and other benefits) 53 (paternity leave), 54 (end of year bonus) and Parts VI (termination of agreement and reduction of workforce), Part VII (workfare programme fund), Part VIII (portable retirement gratuity fund) and Part XI (violence at work).
- 2.2. **Work from home:** An employer may require any employee (i.e. a worker or an employee) to work from home provided that a notice of at least 48 hours is given to the employee and subject to regulations that the Minister of Labour may make.
- 2.3. **Flexitime:** the COVID-19 Act amends the provisions of the WRA 2019 relating



to flexitime such that henceforth, where an employer makes such a request to a worker to work on flexible hours, the employer must give the said worker at least 48 hours' advance notice. The list of restricted circumstances (i.e. to take care of the worker's child who is below school age or who has an impairment) in which a worker can request to work on flexitime has been removed.

2.4. Withholding of Annual leaves: An employer is entitled, during a period of 18 months following the expiry of the COVID-19 period, to withhold up to 15 days' annual leave, or such other number of annual leaves as may be prescribed from the aggregate annual leaves provided in section 45(1) of the WRA 2019 which accrues to a worker as from the beginning of the year of the COVID-19 period or such further period as may be prescribed. An employer may not withhold the annual leaves of a worker who has performed work during such days as required by his employer during the COVID-19 period. For part-time workers, the withholding of the annual leaves will be pro-rated. For periods of less than 12 consecutive months, the aggregate annual leaves entitlement (to be rounded off) shall be prorated and computed in accordance with the following formula:

$N/12 \times Y$, where,

N= no. of annual leaves under section 45(1) or 45(5) [for part-time workers]

Y= no. of months in the period of less than 12 consecutive months.

2.5. Protection from termination of employment: There shall be no termination of employment of any employee in the months during which an employer benefitted from the Government Wage Assistance Scheme (see paragraph 4.3 below) or received some other financial assistance from the State, or State agent, under any other enactment or otherwise.

2.6. Transfer of Undertaking: The Minister of Labour may exempt an employer providing services in the sectors such as air traffic control, air transport services, civil aviation and airport, including ground handling and ancillary services, customs, electricity, health, hotel services, radio and television, refuse disposal, hospital, telephone, transport of passengers and goods, water supply and Port, including cargo handling services and other related activities in the Port, (altogether the "Concerned Services Sectors") from complying with section 67 of the WRA 2019, which is normally applicable following a transfer of undertaking. The Minister of Labour may further provide for terms and conditions on which an employee may be offered employment by a new employer following a transfer of undertaking or taking over of the trade/business of the previous employer.

2.7. Reduction of workforce in certain enterprises of the Concerned Services Sectors: The Minister of Labour will make regulations to exempt employers of the Concerned Services Sectors from resorting to the lengthy process specified in section 72 of the WRA 2019, if it is intended to temporarily or permanently reduce the workforce or close down their enterprise. The alternative process introduced in section 72A of the WRA 2019 provides for the same procedural steps and orders which were open to the Redundancy Board (i.e. 30 days' wages as indemnity in lieu of notice if the termination is justified or severance allowance at the rate of 3 months' remuneration per year of service in case of unjustified termination), as provided under section 72 of the WRA 2019. There is, however, a shorter timeframe for an employer to give notification to the Redundancy Board and the Redundancy Board shall complete its proceedings within 15 days from the date of the notification. The new option introduced by Section 72A of the WRA 2019 is that the Redundancy Board may validate an agreement such that, in lieu of ordering justified



termination of employment and payment of 30 days' wages as indemnity in lieu of notice, at the request of the employer and subject to the consent of the employee or category of employees concerned, those employees be on leave without pay during such period as specified by the employer in its notification and that resumption of employment shall be on such new terms and conditions, including pension benefits, as offered by the employer, prior to resuming work.

2.8. Payment of Transition

Unemployment Benefit: Employees whose employment have been terminated whilst having received the financial assistance mentioned in paragraph 2.5 above or who opt to be on leave without pay, pursuant to an order of the Redundancy Board, as mentioned in paragraph 2.7 above without having been in employment during the period of leave without pay, are eligible to the transition unemployment benefit provided for under section 84 of the WRA 2019.

2.9. Portable Retirement Gratuity Fund (PRGF):

The provisions relating to the PRGF, which ought to have become operational in January 2020 and contributions of which were to be made starting April 2020 have been postponed to a later stage, to be prescribed by the Ministry of Labour.

2.9.1. *[This provision became effective as from 01 January 2020]:* In cases where, on or after 01 January 2020, no contribution has been paid by an employer in relation to its employee eligible to the PRGF and:

2.9.1.1. the eligible employee retires or dies, any gratuity payable to the eligible employee or the latter's heirs, as the case may be, must be paid by the employer and the calculation of the gratuity will be prescribed by the Minister; or

2.9.1.2. the eligible employee resigns or his employment is terminated, any contribution to be made by the employer to the PRGF will be as per the prescribed rate.

The following provisions became effective as from 16 May 2020 and have been announced as being only temporary measures to deal with the COVID-19 period, by the Ministry of the Labour:

2.10. Night Shift Work (Section 23(7) of the WRA 2019):

No allowance is payable to a worker working on a night shift from the commencement of this subsection and until such further period as may be prescribed by the Minister of Labour.

2.11. Overtime in connection with COVID-19 period (Section 24A of the WRA 2019):

Workers in the blockmaking, construction, stone crushing, and related industries or manufacturing sector governed by the Factory Employees (Remuneration) Regulations 2019 are entitled to the following as compensation for overtime work performed from the commencement of this section or such further period as may be prescribed:

2.11.1. either (i) additional remuneration for overtime, i.e. twice basic hourly rate for work on public holiday and 1.5 times basic hourly rate for overtime in excess of 45 hours or such lesser number of agreed hours, on any other day, or

2.11.2. (ii) paid time off calculated in accordance with the rate at which additional remuneration for overtime as specified in 2.11.1 would be payable and which the worker can carry forward up to 31 December 2021 or until the worker ceases to be in employment, in any manner whatsoever, or after such other date as may be prescribed. The worker is entitled to receive payment in lieu of time off if he cannot avail himself of all the

time off accumulated as at the 31 December 2021 or until the worker ceases to be in employment, in any manner whatsoever, or after such other date as may be prescribed.

2.11.3. The paid time off in any period may be granted both by the employer or at the request of the worker.

2.12. New Offences (Section 123(1)(g) of the WRA 2019): Any person contravening the following sections, shall commit an offence and on conviction, shall be liable to a fine not exceeding MUR 25,000 and to a term of imprisonment not exceeding 2 years:

2.12.1. Section 5: Discrimination in employment and occupation;

2.12.2. Section 8: Restriction on employment of children;

2.12.3. Section 16: Compromise agreement;

2.12.4. Section 24: Overtime;

2.12.5. Section 26: Equal remuneration for work of equal value;

2.12.6. Section 27: Payment of remuneration to a worker;

2.12.7. Section 33: Payment of additional remuneration;

2.12.8. Section 54: End of year bonus;

2.12.9. Section 118(4): Power to make enquiries (impeding, delaying the supervising officer of the Ministry of Labour in the exercise of its powers; failing to comply with a request or to answer a question of the supervising officer of the Ministry of Labour, or concealing or preventing any person from appearing before or from being examined by the supervising officer of the Ministry of Labour.)

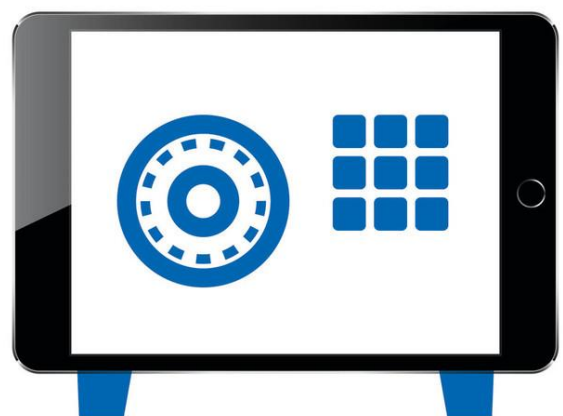
3. Banking

The amendments brought to the Banking Act 2004 became effective as from 23 March 2020 to provide that:

3.1. On account of the COVID-19 virus having a negative impact on the economy of Mauritius, the Bank of Mauritius (the **BOM**) may grant such amount to the Government, as the Board of the BOM may approve, to assist it in its fiscal measures to stabilise the economy of Mauritius.

3.2. The Board of the BOM may also approve such grant from the Special Reserve Fund of the BOM to assist the Government in its fiscal measures to stabilise the economy of Mauritius.

3.3. The Board of the BOM may provide capital to or invest such amount as it determines from the official foreign reserves, in any corporation or company set up for the purpose of facilitating economic development.





4. Income Tax

INCOME TAX

Amendments have been brought to the Income Tax Act 1995 (the “**ITA 1995**”) effective as from 23 March 2020 to introduce the following:

4.1. Contribution to Covid-19 Solidarity Fund:

4.1.1. Relief will be provided to any individual who has contributed to the COVID-19 Solidarity Fund in the income year commencing on 1 July 2019 or 1 July 2020.

4.1.2. The amount contributed or donated in that income year will be deducted from the individual’s net income after deductions of income exemption threshold, interest relief in respect of housing loan, medical or health insurance premium relief and allowance for household employees.

4.1.3. Any unrelieved amount for an income year may be carried forward and deducted against the net income of the income year immediately following that income year up to a maximum of 2 income years.

4.2. COVID-19 Levy:

4.2.1. Every employer (an individual, a resident société or a company) who has benefitted from an allowance under the Wage Assistance Scheme (as defined in paragraph 4.3 below) shall be liable to pay a levy to the Director General of the Mauritius Revenue Authority (the “Director General”), in respect of the year of assessment commencing on 1 July 2020, 1 July 2021 or 1 July 2022 as the case may be.

4.2.2. The levy payable by the employer shall be declared in his return and shall be paid to the

Director General on or before the date by which the return is required to be submitted.

4.2.3. If the employer fails to pay the levy on or before the date it is payable, the Director General may, within a period of 3 years from the date the levy is payable, issue a claim to him requesting him to pay the levy together with any penalty and interest applicable, within 28 days from the date of the notice.

4.2.4. The Minister of Finance may, by regulations, exclude certain categories of employers from the payment of this levy.

4.2.5. Any employer who makes a false declaration or gives a false or misleading statement shall commit an offence and shall be liable to a fine not exceeding MUR one million and to imprisonment for a term not exceeding 2 years.

4.3. Government Wage Assistance Scheme (GWAS):

4.3.1. The GWAS is applicable to an “eligible employee”, defined as an employee employed on a part-time or full-time basis:

4.3.1.1. by an employer deriving gross income from business;

4.3.1.2. by a charitable institution approved by the Director General or registered under the Registration of Associations Act, charitable trust or charitable foundation; and

4.3.1.3. whose basic salary or wage for March 2020, April 2020, May 2020 or such other month as may be prescribed, does not exceed MUR 50,000;

4.3.2. An employee employed by a Ministry, a Government department, a local authority, a statutory body or the Rodrigues Regional Assembly or an



employee employed by such category of employer as may be prescribed is not eligible to the GWAS.

4.3.3. The GWAS is paid to the eligible employees by the Director General on the following basis:

4.3.3.1. 50% of the basic salary for March 2020;

4.3.3.2. the basic salary for April 2020 where the main business activities of the employer are carried out in Mauritius and 50% of the basic salary where the main business activities of the employer are carried out in Rodrigues or Agaléga;

4.3.3.3. the basic salary for May 2020 where the main business activities of the employer are carried out in Mauritius.

4.4. The Self-Employed Wage Assistance Scheme (SEAS):

4.4.1. The SEAS is payable to a "self-employed", who is defined as an individual who is a citizen of Mauritius and is resident in Mauritius; who is above the age of 18; who is not employed, as at 1 March 2020, by any employer, whether on a full-time or part-time basis; and who has been in business on his own account or is a trade person carrying out activities such as mason, cabinet maker, plumber, hairdresser, artist or other similar activities for a period of at least 3 months prior to the start of the COVID-19 period.

4.4.2. An individual who derives exclusively passive income and an individual who was not carrying out any income earning activity prior to the start of the COVID-19 period is not eligible to the SEAS.

4.4.3. Every self-employed (as defined above) shall be entitled to the payment of the SEAS as follows:

4.4.3.1. MUR 5,100 for the period 16 March 2020 to 15 April 2020;

4.4.3.2. MUR 2,550 for the period 16 April 2020 to 30 April 2020 where his main business activities are carried out in Mauritius; and

4.4.3.3. MUR 5,100 for May 2020 where his main business activities are carried out in Mauritius.

4.4.4. A self-employed is not entitled to the SEAS where:

4.4.4.1. he is eligible to receive social benefits, including basic retirement pension or widows pension under the National Pensions Act;

4.4.4.2. he is pursuing higher studies on a full-time basis;

4.4.4.3. he is a dependent spouse;

4.4.4.4. his monthly income, when aggregated to that of his spouse, exceeds MUR 50,000; or

4.4.4.5. he is a registered fisherman.

4.4.5. In the event the self-employed makes a false declaration to unduly benefit from such allowances or he refuses to give information or even gives false information, the latter will be liable to a fine not exceeding MUR 10,000 and to imprisonment for a term not exceeding 6 months.



5. Corporate

The COVID-19 Act brings about the following notable amendments in the corporate sector effective as from 23 March 2020:

5.1. The Companies Act 2001 (the **CA 2001**) is amended in that:

5.1.1. The board of directors of a company shall call an annual meeting of shareholders not later than 9 months after the balance sheet date of the company or such further period, as the Registrar of Companies (the **ROC**) may determine, after the COVID-19 period lapses, instead of the 6 months previously provided for in the CA 2001.

5.1.2. The requirements that an annual meeting of shareholders shall not be held more than once a year and not later than 15 months after the previous annual meeting will not apply during the COVID-19 period and such further period, as the ROC may determine after the COVID-19 period lapses.

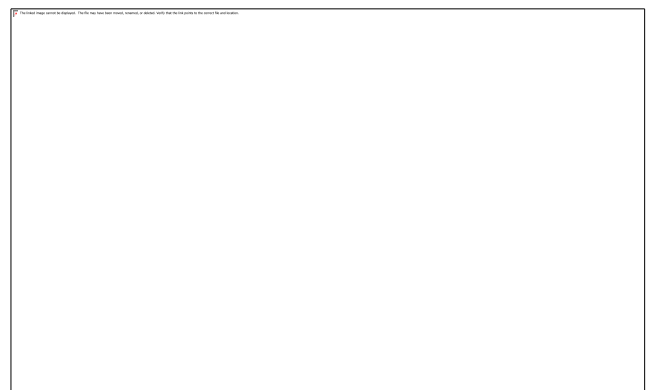
5.1.3. The ROC may issue Practice Directions to determine the way shareholders' meetings should be held during the COVID-19 period and such further period as the ROC may determine after the COVID-19 period lapses.

5.1.4. Section 162 of the CA 2001, which provides for a director's duty to consider the appointment of a liquidator or an administrator when the company is unable to pay its debts, will not apply during the Covid-19 period and such further period, as the ROC may determine, after the COVID-19 period lapses.

5.1.5. Completion and filing of financial statements have been extended to 9 months and 3 months

respectively or such further period as the ROC may determine after the COVID-19 period lapses.

5.2. The CA 2001, the Foundations Act, the Limited Liability Partnerships Act and the Limited Partnerships Act are amended to provide that the ROC may, during the COVID-19 period and such further period, as the ROC may determine after the COVID-19 period lapses, issue such practice directions, guidelines or such other instructions as may be necessary for the proper administration of the abovementioned Acts.



6. Insolvency

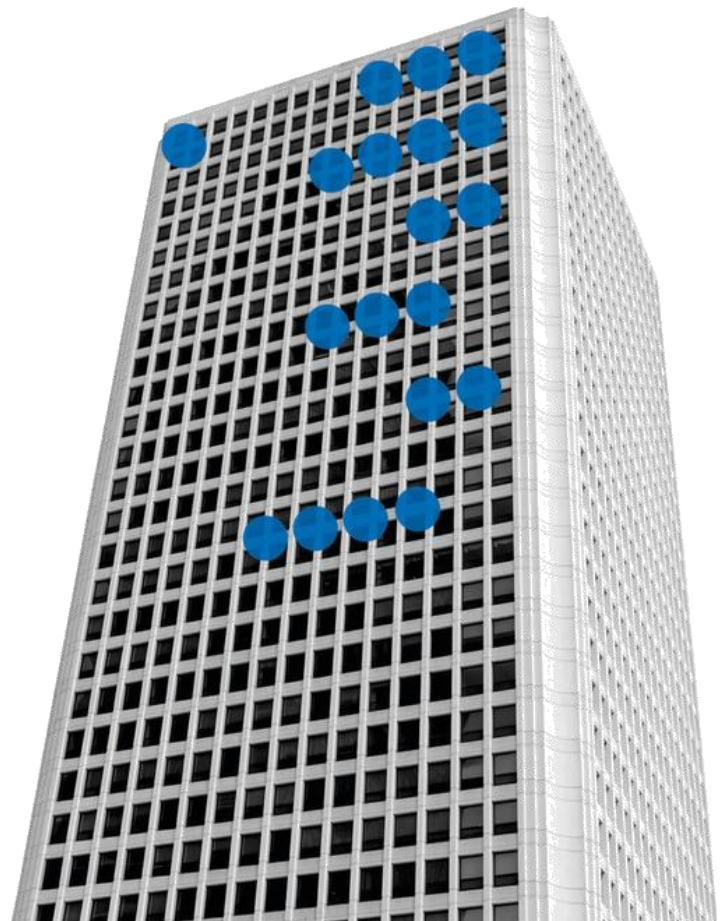
The amendments to the Insolvency Act 2009 (the “**IA 2009**”) and effective as from 23 March 2020 aim at preventing companies and individuals from going into liquidation or bankrupt, as the case may be, during the Covid-19 period and provide for the following:

- 6.1.** The appointment of a receiver or a receiver and manager by a charge of an instrument during the COVID-19 period shall be void.
- 6.2.** A resolution passed by shareholders or creditors of a company for the voluntary winding up of the company during the COVID-19 period, or during a period not exceeding 3 months after the COVID-19 period lapses shall be deemed not to have been passed and shall be void, except for companies holding Global Business Licence. However, a court ordered winding up will be deemed to be valid.
- 6.3.** The threshold for bankruptcy orders, creditor’s petition and debtor’s petition has been increased from Rs. 50,000 to Rs. 100,000 and in relation to statutory demands, from Rs. 100,000 to Rs. 250,000.
- 6.4.** The time limit for a debtor who has been served with a bankruptcy notice to comply with it has increased from 14 to 28 days. Likewise, the time limit for a company which has been served with a statutory demand to:
 - 6.4.1.** comply with it has been increased from 1 month to 2 months;
 - 6.4.2.** have it set aside has been increased from within 14 days to 28 days.
- 6.5.** Any creditors’ meeting during the Covid-19 period or 3 months after the Covid-19 period shall be deemed to be invalid.
- 6.6.** For companies under administration, the time limit for holding the first creditor’s meeting has been extended from 10

days to 30 days after the Covid-19 period lapses.

7. Customs and Freeport

- 7.1.** The amendments brought to the Customs Act 1988 to the effect that importers have up to 16 working days instead of 7 working days to pay any duty, excise duty and taxes in respect of a bill of entry are effective as from 23 March 2020.
- 7.2.** Amendments brought to the Freeport Act 2004 and effective as from 01 May 2020 authorise a private freeport developer to provide warehousing facilities for the storage of goods which have been cleared from Customs, in a freeport zone to any person during the COVID-19 period and such further period as may be prescribed after the COVID-19 period lapses.



8. Environment Protection

- 8.1.** Effective as from 23 March 2020, under the Environment Protection Act 2002, when a time has been imposed on a person to do or refrain from doing any other act or thing, and the time for doing or refraining from doing that other act or thing expires, or falls wholly or partly during the Covid-19 period, or 21 days after the Covid-19 period expires, the person has 30 days to do or refrain from doing that other act or thing.
- 8.2.** An EIA licence which expires during the Covid-19 period or 21 days after that period, shall not be deemed to have expired. The EIA licence will remain valid for a period of 30 days after such period lapses or for such further period as may be prescribed.
- 8.3.** For the period of 1 March 2020 to 31 December 2020, no payment of the environment protection fee in relation to (a) hotel and (b) guest house or tourist residence of more than 4 bedrooms shall be applicable.

- 9.2.** Pertaining to the payment of fixed penalty, any person who is served with a notice shall within 14 days of the service and upon presentation of the notice pay the penalty. However, if the time period of 14 days expires or falls wholly or partly during the COVID-19 period, the person who is served with the said notice shall not later than 3 months after the COVID-19 period lapses pay the penalty. In case of failure to pay such penalty specified, the offender may be liable to criminal proceedings instituted by the Authority and on conviction, may be liable to a fine not less than twice the amount of the fixed penalty.
- 9.3.** Effective as from 23 March 2020, if the renewal period of a tourist accommodation certificate, tourist enterprise licence, pleasure craft licence or canvasser permit expires and falls wholly or partly during the COVID-19 period, they will remain valid for a period of 12 months after the period of one month lapses. The payment of the renewal fee shall be made in equal monthly instalments and in case of failure to pay the said renewal fee for 3 (three) consecutive months, the tourist accommodation certificate, tourist enterprise licence, pleasure craft licence or canvasser permit, as the case may be, shall lapse.

9. Tourism

- 9.1.** The Tourism Authority (the "Authority") may issue guidelines as and when appropriate on the ground of public health to holders of pleasure craft licences by restricting the number of passengers authorised on board pleasure crafts at any one time and by imposing such other conditions as may be necessary. Any holder of a pleasure craft licence who fails to comply with any such guidelines issued and conditions imposed, shall commit an offence.





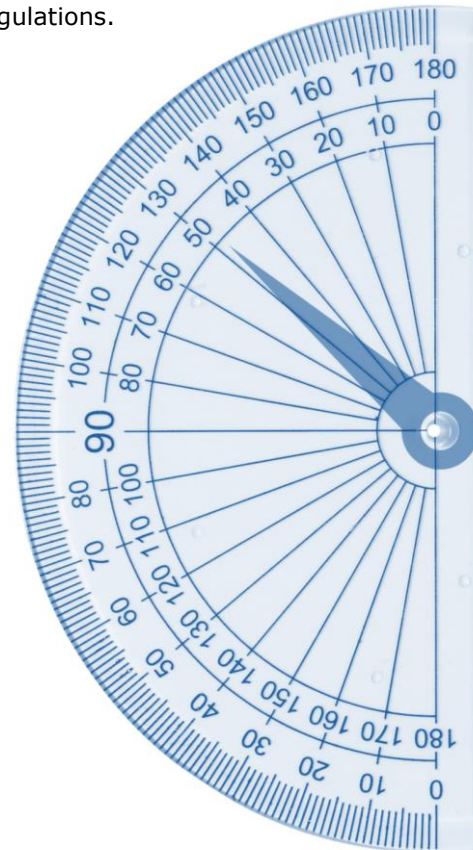
10. Landlord and Tenant

- 10.1.** The Landlord and Tenant Act has been amended to include that, effective as from 23 March 2020, the non-payment of rent for the months of March 2020 up to August 2020, and such other month as may be prescribed by the law, does not amount to a breach of a tenancy agreement as long as the payment is fully paid in instalments by 31 December 2021 or such other date as may be prescribed by the law.
- 10.2.** The moratorium for payment of rent for the period mentioned above applies to both residential and business premises.
- 10.3.** Where rent has not been paid by a tenant for the period mentioned in above, the Court shall not make a Possession Order.



11. Miscellaneous Provisions

Effective as from 23 March 2020, a moratorium for the payment of electricity and water bills that became due during COVID 19 period, without any surcharge, will be provided by way of regulations.



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