

VIRAL LAW

A blog series on legal issues arising from the *Corona* pandemic

A summary of the Coronavirus Disease 2019 (Temporary Provisions) Act, No. 17 of 2021

by

Eric Dathika Wikramanayake
Senior Associate
Attorney-at-Law (New York) (Sri Lanka)
LL.B (UCL), LL.M (Columbia)



Commercial and Corporate M & A Division



+94 (0) 114 712 625



arw@nithyapartners.com



www.nithyapartners.com

The Coronavirus Disease 2019 (COVID-19) (Temporary Provisions) Act, No. 17 of 2021: A Summary

Introduction

Since the outbreak of COVID-19 nearly two years ago, countries across the globe have been compelled to enact temporary laws in an effort to combat, mitigate and adapt to the social, economic and other day-to-day consequences of a global pandemic. Here in Sri Lanka, the State's legislative response to such disruptions and drawbacks thus far has been largely *ad hoc* and driven by way of subordinate legislation – consisting of a mishmash of regulations, directives and guidelines issued by or through various state instrumentalities. This article focuses exclusively on the most recent of these measures, namely – the Coronavirus Disease 2019 (COVID-19) (Temporary Provisions) Act, No. 17 of 2021 (hereinafter the “**Act**”), which was recently certified and enacted into law on the 23rd of August 2021.

A Temporary Provision

As its title suggests, the Act is intended to function purely as a “stop gap” or temporary means of addressing specific problems brought about by the pandemic. The operation and validity of the Act is also backdated to approximately correspond to the initial outbreak of COVID-19 in Sri Lanka. As such, it is important to note that the provisions of the Act shall, unless otherwise extended by the Minister, only be operational for a period of two (02) years commencing from the 1st of March 2020.

The Scope and Purpose of the Act

Substantively, the Act, as enacted, provides for **three** temporary mechanisms of relief.

The first, contained in Part I of the Act, provides for persons to be granted discretionary relief where they have been unable, either due to COVID-19 or any other circumstance arising out of or consequential thereto (hereinafter a “**COVID-19 circumstance**”), to comply with any time limit specified by law for the institution or filing of an action, application or appeal or for doing or performing any time-sensitive act.

Accordingly, where a court, tribunal or other authority established by or under any law is satisfied that a person was prevented from complying with any such time limit due to a COVID-19 circumstance, the Act empowers it to permit and entertain the relevant action, application, appeal or act, notwithstanding such lapse, by allowing the period during which such person was subject to the COVID-19 circumstance to be excluded from its calculation of the applicable time frame.

Note, however, that any party making an application for relief under and in terms of such provisions will necessarily bear the burden of proving that its inability to comply was due to a COVID-19 circumstance.

Consequently, where, for example, a prospective litigant fails to institute action within the time limits specified by the Prescription Ordinance or a workman fails to contest his or her termination by applying to a labour tribunal within the time frame prescribed by the Industrial Disputes Act or a company fails to file a return or disclosure with authorities such as the Registrar General of Companies or the Securities and Exchange Commission of Sri Lanka due to a COVID-19 circumstance, such party may apply to the relevant court, tribunal or authority for relief under the Act.

There are, of course, exceptions and conditions to this exemption. The first is that the period excluded as relief under the Act must not exceed a period of twelve (12) months unless the relevant court, tribunal or authority deems it just and equitable to do so – provided, further, that the statutory discretion of any such court, tribunal or authority to allow for relief beyond a twelve-month period is capped at an aggregate of eighteen (18) months. Second, the Act carves out and excludes from the general relief provided thereunder any applications or appeals that are governed by rules of the Supreme Court or Court of Appeal made under Article 136 of the Constitution, which provide for more specific parameters of relief.

The remaining provisions of the Act provide for two measures that are largely administrative by nature and intended to facilitate the sustained and continuous administration of justice by our courts. Part II of the law, for example, grants the Judicial Service Commission (JSC) discretion to temporarily address situations in which the functioning of a given court of first instance is disrupted due to a COVID-19 circumstance. In such circumstances, the Act empowers the JSC to designate the nearest court of concurrent jurisdiction as an alternative forum to such court of first instance before which its existing or new matters may be heard and considered for so long as the disruption in question persists.

Finally, Part III of the Act provides for any action, application, appeal or proceeding to be conducted by way of live video remote communication technology where a person is physically unable to appear in court or a court's proceedings cannot be conducted due to a COVID-19 circumstance.

Conclusion

The Act, as enacted, has been criticized as being “too little, too late” – particularly when compared to its counterparts in other jurisdictions. Many of these laws were extensive pieces of legislation drafted to benefit a much wider spectrum of stakeholders than just litigants and their lawyers and

included, for example, measures ranging from statutorily mandated amnesty periods for parties in breach of their contractual obligations to the provisional modification of director's duties in respect of near-insolvent companies. Another concern relates to the actual impact, utility and practicality of the measures provided for – for example, when considering the efficacy of temporarily designating an alternative forum where most courts are already inundated with cases and court records are not yet digitized. Conversely, others argue that the Act should only be considered as one part of a much larger patchwork of measures which collectively are intended to afford stakeholders with the relief required. Regardless, as with most things in the COVID-era, only time will tell whether the Act will in fact be useful or not.

This article is intended for informational purposes only, is merely a summary of the primary provisions of the Coronavirus Disease 2019 (COVID-19) (Temporary Provisions) Act, No. 17 of 2021 and, as such, should not, under any circumstances, be used or construed as legal advice in any manner or form.