



E-Alert: The Coronavirus Disease 2019 (Covid-19) (Temporary Provisions) Act No. 17 of 2021

On 23rd August 2021, the Coronavirus Disease (Covid-19) (Temporary Provisions) Act (the “Act”) was passed into law. In this e-alert, senior members of the firm’s Dispute Resolution department provide an overview of the salient provisions of this new legislative enactment.

What is the main purpose of the Act?

To make temporary provisions:

- to provide relief to persons who are unable to comply with prescribed time periods set out in law due to Covid-19 circumstances;
- to assign alternative courts where a court is unable to function due to Covid-19 circumstances; and
- to conduct court proceedings using remote communication technology.

What is the operative period of the Act?

The provisions of the Act will be operative for a period of 2 years from 1st March 2020, with the ability for the Minister to extend the same for a period not exceeding a further 2 years (i.e., it will be operative from 1st March 2020 to 28th February 2022, with the ability to be further extended). However, the maximum period of extension cannot be beyond 28th February 2024.

What is a ‘Covid-19 circumstance’?

Covid-19; or any other circumstance arising out of or consequential to Covid-19.

What is ‘Covid-19’ for the purposes of the Act?

“Covid-19” means the Coronavirus Disease 2019 (Covid-19) declared as a quarantinable disease by Notification published in the Gazette Extraordinary No. 2167/18 of 20th March 2020 under the Quarantine and Prevention of Diseases Ordinance (Chapter 222).

How does the Act provide for situations where persons have been unable to comply with timelines set out in law due to Covid-19 circumstances?

Various laws and regulations set out time periods within which certain steps have to be taken in judicial proceedings. In normal circumstances, compliance with these timelines is mandatory. However, due to the Covid-19 pandemic situation, the general public/litigants have faced difficulties in complying with these timelines due to lockdowns, curfew, travel restrictions etc. This new Act provides relief to such persons/litigants by compelling courts, tribunals and/or any other institutions to take into consideration the circumstances/reasons provided by such persons/litigants and allow, admit and/or entertain an action, application, appeal, other proceeding and/or act, regardless of the lapse of the time period prescribed by law for such purpose. Therefore, in such circumstances the period within which such person was subject to such “Covid-19 circumstance” shall be excluded in calculating the said prescribed time period.

According to the Act, the maximum period of relief provided is 12 months with the provision for a further period not exceeding 6 months to be granted where the court, tribunal or any other authority established by or under any law is satisfied that it is just and equitable to do so.

The maximum period excluded as a relief shall not exceed 18 months in the aggregate. This will have to be kept in mind by persons seeking relief under this Act.

The period of relief granted is not an automatic entitlement. The person seeking to invoke this Act must prove that his/her inability to comply with the prescribed time periods was due to a 'Covid-19 circumstance'. Therefore, it will be prudent to act diligently keeping in mind the timelines set out in the laws/regulations for compliance and comply with such timeline as soon as possible.

What is considered as *prima facie* proof of a 'Covid-19' circumstance?

Any guideline, direction, circular, notice or decision whether in the printed or electronic form, made by the Government in relation to Covid-19 . If a party disputes such fact, the burden of proof shall be on the party who disputes such admissibility. For the purpose of this section, "Government" means any proper authority as defined in any regulation made under the Quarantine and Prevention of Diseases Ordinance (Chapter 222) in relation to Covid-19 .

What are the exclusions to the application of the Act?

The relief under the Act shall not apply for any application or appeal which is subject to:

- (a) the Supreme Court (Temporary Provisions) Rules 2020, published in the Gazette Extraordinary No. 2174/4 of 6th May 2020;
- (b) the Supreme Court (Temporary Provisions) Rules 2021, published in the Gazette Extraordinary No. 2211/56 of 21st January 2021;
- (c) the Court of Appeal (Procedure for Appeals from High Courts established by Article 154P of the Constitution) (Temporary Provisions) Rules 2020, published in the Gazette Extraordinary No. 2175/2 of 12th May 2020; and
- (d) the Court of Appeal (Procedure for Appeals from High Courts established by Article 154P of the Constitution) (Temporary Provisions) Rules 2021, published in the Gazette Extraordinary No. 2211/56 of 21st January 2021;
- (e) any Supreme Court Rule or Court of Appeal Rule as may be made under Article 136 of the Constitution within the period of operation of this Act, granting any exclusion of time period as a relief in respect of any COVID - 19 circumstance.

What are the provisions for designation of alternative courts?

Part II of the Act makes provision for the continuation of court proceedings in courts of first instance where the functioning of such court is disrupted due to any Covid-19 circumstance.

The Judicature Act No.02 of 1978 (as amended) defines the 'Courts of First Instance' as being High Courts, District Courts, Small Claims Courts and Magistrate's Courts.

In situations of disruption as aforementioned, subject to the provisions of section 46 and 47 of the Judicature Act No 2 of 1978, the Judicial Service Commission has the power to delegate the nearest court of concurrent jurisdiction as the alternative court in place of such affected court for the period in which the court proceedings are disrupted.

Any action, prosecution, proceeding or matter filed in or considered by such court of first instance, or any new action, prosecution, proceeding or matter filed, shall be considered or heard by the designated court.

However, it specifically excludes situations where the court of first instance has- (a) reserved such action, prosecution, proceeding or matter for judgment, order or other pronouncement; or (b) all hearings in such action, prosecution, proceeding or matter have been concluded before such court of first instance.

Such action, prosecution, proceeding or matter filed in or considered by an alternative court may, subsequently be transferred to the court of first instance which previously exercised jurisdiction in relation to such action upon the resumption of ordinary functions of such original court excluding situations where (a) the designated court has reserved such action, prosecution, proceeding or matter for judgment, order or other pronouncement; or (b) all hearings in such action, prosecution, proceeding or matter have been concluded before such designated court.

With the spread of COVID 19 we have seen many court staff and lawyers being infected. On numerous instances, courts have been closed due to lockdowns, curfews etc. Accordingly, while this provision is one which is timely and needed, the practical implementation may have difficulties i.e., relating to physical transfer of files, etc., which can be overcome with detailed guidelines issued by the Judicial Service Commission.

What are the provisions in the Act relating to conducting court proceedings using remote communication technology?

Prior to the enactment of this Act, there were no laws relating to the conduct of court proceedings by live audio-video link using remote communication technology in a court of first instance in Sri Lanka. Part III of this Act now provides for such proceedings to be conducted digitally where any person is unable to appear in court, or where the proceedings of the court cannot be conducted under normal procedure due to a Covid-19 circumstance.

The Act also extended the applicability of the following rules, as far as applicable, in relation to any action, application, appeal or proceeding conducted before any court of first instance:

- (a) the Supreme Court (Electronic Filing and Urgent Digital Virtual Hearings) (Special Provisions) Rules 2021;
- (b) the Court of Appeal (Electronic Filing and Urgent Digital Virtual Hearings) (Special Provisions) Rules 2021; and
- (c) any other Supreme Court Rule or Court of Appeal Rule as may be made under Article 136 of the Constitution within the period of operation of this Act, in relation to conducting of court proceedings using remote communication technology.

Final comments

Overall, the Act itself is a timely piece of legislation and any short-term challenges of implementation should be overcome by cooperation between all stakeholders involved in this process and appropriate logistical backing.

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