

Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During National Lockdown) Regulations, 2020

ARRANGEMENT OF SECTIONS

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WHEREAS a State of Disaster in connection with the COVID-19 formidable infectious disease was declared on the 23rd March, 2020, by Statutory Instrument 76 of 2020;

AND WHEREAS the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020, was published on the 29th March, 2020, in Statutory Instrument 83 of 2020, declaring a national lockdown to contain the spread of the COVID-19 formidable infectious disease with effect from the 30th March, 2020 to the 19th April, 2020;

AND WHEREAS it is provided in section 2(1) of the Presidential Powers (Temporary Measures) Act [*Chapter 10:20*] that “When it appears to the President that a situation has arisen or is likely to arise which needs to be dealt with urgently in the interests [*inter alia*] of ... public safety... [and] public health... and the situation cannot adequately be dealt with in terms of any other law; and because of the urgency it is inexpedient to await the passage through Parliament of an Act dealing with the situation; then, subject to the Constitution and this Act, the President may make such regulations as he considers will deal with the situation”;

AND WHEREAS on account of the national lockdown many persons are on forced leave from employment and therefore unable to earn the income necessary to pay for, among other things, rental for residential accommodation and mortgage repayments;

NOW, THEREFORE HIS Excellency the President, in terms of section 2 of the Presidential Powers (Temporary Measures) Act [*Chapter 10:20*], hereby makes the following regulations:—

Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During National Lockdown) Regulations, 2020

Title

1. These regulations may be cited as the Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During National Lockdown) Regulations, 2020.

Interpretation

2. In these regulations—

“deferred mortgage repayment” means any mortgage repayment the repayment of which is deferred by virtue of these regulations;

“deferred rental” means any rental the payment of which is deferred by virtue of these regulations;

“national lockdown” means the restrictions on the movement of persons and on intercity, airborne and cross border traffic prescribed by the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020 (Statutory Instrument 83 of 2020);

“mortgage” means a mortgage of immovable property or a registered cession of a mortgage bond over immovable property, and “mortgagor”, “mortgagor” and “mortgaged property” shall be construed accordingly;

“mortgage bond” means a bond attested by the Registrar of Deeds specially hypothecating immovable property;

“owner”, in relation to the land or premises occupied by a protected tenant, includes the legal representative authorised by such owner;

“protected mortgagor” means a mortgagor protected from any legal proceedings referred to in section 3 to the extent that he or she is unable to pay rent in the circumstances set forth in section 3 during the period of national lockdown and complies with section 5 after such lockdown;

“protected tenant” means a tenant protected from any legal proceedings referred to in section 3 to the extent that he or she is unable to pay rent in the circumstances set forth in section 3 during the period of national lockdown and complies with section 5 after such lockdown.

Restraint on eviction, etc. of protected tenants

3. (1) Notwithstanding anything to the contrary in any other law (statutory or non-statutory), for the duration of the national lockdown (and any extension thereof), but subject to this section, a person occupying rented accommodation for residential purposes —

- (a) is hereby granted a deferral in terms of these regulations of the obligation to pay such rental during the period of the national lockdown;
- (b) shall not be subjected to any legal proceedings for (nor shall any court make any order for)—
 - (i) the eviction or ejection from the land or premises constituting the rented accommodation during the period of the lockdown, nor afterwards if the protected tenant complies with section 5;
 - (ii) the recovery of possession of the land or premises constituting the rented accommodation during the period of the lockdown, nor afterwards if the protected tenant complies with section 5;
 - (iii) for the payment of damages by such renter in respect of the occupation or purported trespass of the land or premises constituting the rented accommodation, if the tenant is a protected tenant and otherwise complies with section 5.

(2) For the avoidance of doubt it is declared that—

- (a) a person occupying rented accommodation for residential purposes is not prohibited from paying rental in full or to the extent that he or she is able to do so during the period of the national lockdown, in which event these regulations shall apply to him or her as a protected tenant only to the extent that any rent or portion thereof is unpaid by him or her during that period;
- (b) a protected tenant who does not pay the full or any portion of rent due and payable during the period of national lockdown is conclusively presumed to be unable to do so by reason of the national lockdown, whether because of the inability to earn or receive income or sufficient income or otherwise.

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(3) For the period of the national lockdown, no protected tenant shall be required by the owner of the land or premises constituting the rented accommodation to vacate the land or premises during the national lockdown for any reason (other than non-payment of rent) afforded to such owner by law to compel the vacation of such land or premises:

Provided that this paragraph does not apply to the temporary vacation of property for the purposes referred to in section 6(1)(d) Public Health (COVID-19 Prevention and Containment) Regulations, 2020 (Statutory Instrument 77 of 2020).

(4) For the period of the national lockdown no protected tenant—

- (a) be subjected to any landlord's lien for the recovery of rent unpaid during the lockdown;
- (b) be subjected to any increase or escalation of rental, whether or not such increase or escalation is provided for under the rental contract.

(5) This section applies to all contracts for the payment of rental for accommodation for residential purposes, whether the obligation to pay rental is statutory or contractual.

Restraint on foreclosure, etc. against protected mortgagors

4. (1) Notwithstanding anything to the contrary in any other law (statutory or non-statutory), for the duration of the national lockdown (and any extension thereof), but subject to this section, every mortgagor—

- (a) is hereby granted a deferral in terms of these regulations of the obligation to make mortgage repayments;
- (b) shall not be subjected to any legal proceedings for (nor shall any court make any order for)—
 - (i) the foreclosure of a mortgage bond or other action for the taking of possession of a mortgaged property;
 - (ii) the eviction or ejection from the land or premises constituting the mortgaged property, during the period of the lockdown, nor afterwards if the protected mortgagor complies with section 6;

- (iii) the recovery of possession of the land or premises constituting the mortgaged property during the period of the lockdown, nor afterwards if the protected mortgagor complies with section 6;
- (iv) for the payment of damages by such protected mortgagor in respect of the occupation or purported trespass of the land or premises constituting the mortgaged property, if the protected mortgagor complies with section 6.

(2) For the avoidance of doubt it is declared that—

- (a) a person occupying mortgaged property is not prohibited from paying his or her mortgage obligations in full or to the extent that he or she is able to do so during the period of the national lockdown, in which event these regulations shall apply to him or her as a protected mortgagor only to the extent that any mortgage repayment or portion thereof is unpaid by him or her during that period;
- (b) a protected mortgagor who does not pay the full or any portion of a mortgage repayment due and payable during the period of national lockdown is conclusively presumed to be unable to do so by reason of the national lockdown, whether because of the inability to earn or receive income or sufficient income or otherwise.

(3) For the period of the national lockdown, no protected mortgagor shall be required by the mortgagee of the mortgaged property to vacate mortgaged property during the national lockdown for any reason (other than non-payment of a mortgage payment) afforded to such mortgagee by law to compel the vacation of such mortgaged property:

Provided that this paragraph does not apply to the temporary vacation of property for the purposes referred to in section 6(1)(d) Public Health (COVID-19 Prevention and Containment) Regulations, 2020 (Statutory Instrument 77 of 2020).

(4) For the period of the national lockdown no protected mortgagor—

- (a) be subjected to any landlord's lien for the recovery of rent unpaid during the lockdown;

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- (b) be subjected to any increase or escalation of mortgage repayments, whether or not such increase or escalation is provided for under the mortgage bond.

Post-deferral payment of rental arrears

5. (1) With effect from the month of May, 2020 (or any later month on account of an extension of the national lockdown, in which event a later month shall be specified by General Notice in the *Gazette*), deferred rental shall be paid by every protected tenant (without interest or penalties of whatever nature for delayed payment) in the manner prescribed by this section.

(2) The protected tenant shall (unless he or she earlier pays the full amount) pay to the owner without any deduction the sum of the rental deferred for each month (beginning on the 1st April, 2020) or part of a month during which the national lockdown is in force in three equal monthly instalments:

Provided that if rent is deferred in respect of two or more months during which the national lockdown is in force, repayment of the deferred rental shall be staggered over the number of consecutive months equal to the number of one-third payments of rental due for each month during which the national lockdown is in force.

(3) In amplification of the proviso to subsection (2), if rent is deferred in respect of—

- (a) two months during which the national lockdown is in force, the deferred rental is repayable in six equal instalments over six months beginning with the month immediately following the month in or at the end of which the national lockdown is terminated;
- (b) three months during which the national lockdown is in force, the deferred rental is repayable in nine equal instalments over nine months beginning with the month immediately following the month in or at the end of which the national lockdown is terminated;

and so on.

(4) The failure to pay any instalment of deferred rental by the fourteenth day after the last day on which payment of the instalment

of such rental is due shall render the protected tenant liable to any proceedings in law for the recovery of such rental or rentals, including (for the avoidance of doubt) proceedings from which he or she had formerly been protected under section 3.

(5) For the avoidance of doubt it is declared that the obligation to pay deferred rentals under this section is additional to the obligation to pay the rent due for the month in question.

Post-deferral payment of mortgage arrears

6. (1) With effect from the month of May, 2020 (or any later month on account of an extension of the national lockdown, in which event a later month shall be specified by General Notice in the *Gazette*), deferred mortgage repayments shall be paid by every protected mortgagor (without interest or penalties of whatever nature for delayed payment) in the manner prescribed by this section.

(2) The protected mortgagor shall (unless he or she earlier pays the full amount) pay to the mortgagee without any deduction the sum of the mortgage repayment deferred for each month (beginning on the 1st April, 2020) or part of a month during which the national lockdown is in force in three equal monthly instalments:

Provided that if a mortgage repayment is deferred in respect of two or more months during which the national lockdown is in force, repayment of the deferred mortgage repayment shall be staggered over the number of consecutive months equal to the number of one-third payments of the mortgage repayment due for each month during which the national lockdown is in force.

(3) In amplification of the proviso to subsection (2), if a mortgage repayment is deferred in respect of—

- (a) two months during which the national lockdown is in force, the deferred mortgage repayment is repayable in six equal instalments over six months beginning with the month immediately following the month in or at the end of which the national lockdown is terminated;
- (b) three months during which the national lockdown is in force, the deferred mortgage repayment is repayable in nine equal instalments over nine months beginning with

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the month immediately following the month in or at the end of which the national lockdown is terminated;
and so on.

(4) The failure to pay any deferred mortgage repayment by the fourteenth day after the last day on which a payment of an instalment of such repayment is due shall render the protected mortgagor liable to any proceedings in law for the recovery of such repayments, including (for the avoidance of doubt) proceedings from which he or she had formerly been protected under section 4.

(5) For the avoidance of doubt it is declared that the obligation to pay deferred mortgage repayments under this section is additional to the obligation to pay the mortgage repayment due for the month in question.