

Singapore Management University

Institutional Knowledge at Singapore Management University

Research Collection Yong Pung How School Of
Law

Yong Pung How School of Law

9-2021

Emergency procurement and responses to COVID-19: The case of Singapore

Henry S. GAO

Singapore Management University, henrygao@smu.edu.sg

Follow this and additional works at: https://ink.library.smu.edu.sg/sol_research



Part of the [Asian Studies Commons](#), and the [Health Law and Policy Commons](#)

Citation

GAO, Henry S.. Emergency procurement and responses to COVID-19: The case of Singapore. (2021).

Public procurement in (a) crisis: Global lessons from the COVID-19 pandemic. 1-18.

Available at: https://ink.library.smu.edu.sg/sol_research/3350

This Book Chapter is brought to you for free and open access by the Yong Pung How School of Law at Institutional Knowledge at Singapore Management University. It has been accepted for inclusion in Research Collection Yong Pung How School Of Law by an authorized administrator of Institutional Knowledge at Singapore Management University. For more information, please email cherylds@smu.edu.sg.

Singapore

Henry Gao

I. General introduction

As one of the busiest trade and travel hubs in the world, Singapore quickly became the worst affected of all countries by COVID-19 in the very early stages of the pandemic. For example, on 5 February 2020, two weeks after the unprecedented lockdown in Wuhan by the Central Government of China, Singapore had the highest infection rate (24 cases out of a population of 5 million) in the world, higher than China (20,502 cases out of a population of 1.5 billion).¹ Alongside the health emergency, Singapore also had to cope with another emergency as countries around the world, in a fanatic scramble to fight the pandemic, resorted to restrictions on exports and imports, suspension of international transportation of both goods and people, and the invocation of various emergency powers and exceptions as justifications. As a country with the world's highest trade to GDP ratio at 400 per cent,² Singapore sees trade as its "lifeline"³ and, with the domino effects of more and more trade restrictions being introduced around the world, the health emergency quickly escalated into a trade emergency threatening not only the prosperity of "the little red dot",⁴ but even its very survival.

From early on, Singapore has taken the pandemic very seriously. For example, on 22 January 2020, the Singapore government announced the establishment of a Multi-Ministry Taskforce on Wuhan Coronavirus.⁵ Co-chaired by the Minister for Health and Minister for National Development, the Taskforce has the following terms of reference:

"Direct the national whole-of-government response to the novel coronavirus outbreak; Coordinate the community response to protect Singaporeans and stay vigilant against the spread of the disease; and work with the international community to respond to the outbreak."⁶

¹ Morning brief: Wuhan coronavirus update for Feb 5, 2020, The Independent, 5 February 2020, <http://theindependent.sg/morning-brief-wuhan-coronavirus-update-for-feb-5-2020/>.

² WTO, Trade Policy Review Body - Trade policy review - Report by the Secretariat – Singapore, 5 June 2012, WT/TPR/S/267, at p. vii.

³ Speech by Minister Chan Chun Sing at the Singapore Maritime Lecture 2019, 8 April 2019, <https://www.mti.gov.sg/Newsroom/Speeches/2019/04/Speech-by-Minister-Chan-Chun-Sing-at-the-Singapore-Maritime-Lecture-2019>.

⁴ A nickname often used as a casual reference to Singapore, "little red dot" refers to how the country is depicted on many maps of the world and of Asia as a red dot. See Wikipedia entry on "little red dot", https://en.wikipedia.org/wiki/Little_red_dot. Former Indonesian President B. J. Habibie is widely credited as the first to make the reference in an article in the Asian Wall Street Journal on 4 August 1998. See Richard Borsuk and Reginald Chua, Singapore Strains Relations With Indonesia's President, *Asian Wall Street Journal*, 4 August, 1998, <https://www.wsj.com/articles/SB902170180588248000>.

⁵ Timothy Goh, Wuhan virus: MOH sets up multi-ministry task force, advises against non-essential trips to Wuhan, 22 January 2020, <https://www.straitstimes.com/singapore/health/wuhan-virus-3-more-suspected-cases-in-singapore-avoid-non-essential-travel-to-wuhan>.

⁶ Ministry of Health, Multi-Ministry Taskforce on Wuhan Coronavirus, Terms of Reference (TORs) and Composition, <https://www.moh.gov.sg/docs/librariesprovider5/default-document-library/multi-ministry-taskforce-on-wuhan-coronavirus-and-tor---final.pdf>.

At the time of writing in October 2020, Singapore has emerged relatively unscathed in the pandemic. It not only has one of the lowest number of COVID-19 cases and mortality rates,⁷ but also does not suffer from a shortage of food and other essential products, as has been seen in some countries.⁸ This is a remarkable feat, especially considering that Singapore, being a land-scarce country, does not produce a single grain of rice, or any other agricultural commodities, for that matter.

Singapore's success can be explained by many factors. One of them is its efficient government procurement framework, which enabled the city-state to procure its requirements in a speedy manner to deal with the pandemic. This chapter discusses how Singapore's procurement policies and practices helped the country to fight the pandemic, including among other things, Singapore's use of emergency procurement procedures, its provision of temporary relief measures, and its creative use of trade agreement to ensure the supply of essential goods.

II. Introduction to the regulatory framework

As a Party to the original WTO Government Procurement Agreement (GPA) since 20 October 1997, Singapore became a Party to the revised Government Procurement Agreement (GPA) on 6 Apr 2014. The main statute for implementing the WTO GPA is the Government Procurement Act,⁹ which was first enacted in 1997 and last amended in 2014. The GPA is supported by three pieces of subsidiary legislation:

(i) Government Procurement Regulations,¹⁰ first enacted in 2002 and revamped in 2014, when the revised GPA entered into force for Singapore. It sets out the general procedure for the conduct of procurement.

(ii) Government Procurement (Application) Order,¹¹ first enacted in 2002 and last amended in 2020, which implements the specific obligations under free trade agreements (FTA) by setting out the lists of covered procurement entities and the thresholds applicable to various FTA partners in accordance with the respective free trade agreements.

(iii) Government Procurement (Challenge Proceedings) Regulations,¹² first enacted in 2002 and last revised in 2004, which sets out the bid challenge procedures before the Government Procurement Adjudication Tribunal.

In general, Singapore procurement laws and regulations follow closely the requirements under the GPA, with many parts of the GPR copied from the GPA almost verbatim basis.

⁷ There were significant outbreaks of the COVID cases among migrant workers early in the pandemic, but the situation was quickly put under control with the adoption of various measures. Moreover, as the migrant workers mostly live in dormitories provided by the employers, the cases were contained among the migrant population. See Ang Hwee Min, 'Multi-layered' strategy in place to detect, contain new COVID-19 cases in migrant worker dormitories: MOM, Channel News Asia, 9 September 2020, <https://www.channelnewsasia.com/news/singapore/covid-19-dormitories-new-cases-multi-layered-strategy-13095412>.

⁸ Amy Gunia, How Coronavirus Is Exposing the World's Fragile Food Supply Chain – and Could Leave Millions Hungry, Time, 8 May 2020, <https://time.com/5820381/coronavirus-food-shortages-hunger/>.

⁹ Government Procurement Act, <https://sso.agc.gov.sg/SL/GPA1997-S269-2014?DocDate=20140404>.

¹⁰ Government Procurement Regulations, <https://sso.agc.gov.sg/SL/GPA1997-S269-2014?DocDate=20140404>.

¹¹ Government Procurement (Application) Order, <https://sso.agc.gov.sg/SL/GPA1997-OR1>.

¹² Government Procurement (Challenge Proceedings) Regulations, <https://sso.agc.gov.sg/SL/GPA1997-RG1>.

As a small country, Singapore only has one level of government and does not have sub-central governments in Annex 2 of its schedule to the WTO GPA. In a way, this makes it easier to fight the pandemic as the chain of command is shorter.

Government procurement is conducted according to three core principles:

Transparency, with the government's procurement requirements, procedures and evaluation criteria for quotations and tenders published openly on the Government Electronic Business (GeBIZ) portal;

Open and fair competition, with all suppliers given equitable opportunities and access to compete on a level playing field; and

Value for money, which is derived from the optimal balance of benefits and costs on the basis of total cost of ownership, where the tender is not necessarily awarded to the lowest bidder.¹³

The policy framework for government procurement is administered by the Ministry of Finance (MOF),¹⁴ but there is no central procurement office. Procurements are usually carried out by individual ministries, agencies, and statutory boards, which follow the central procurement guidelines issued by MOF.¹⁵ While centralised purchasing is carried out for common goods and services, Ministries, Departments, Organs of State and Statutory Boards may still purchase off service-wide contracts.¹⁶ The private sector is also engaged by the Government for the delivery of public services through public-private partnerships (PPPs), usually for large projects.¹⁷

Different procurement approaches could be taken depending on the value of the procurement. Procurements of no more than Singapore dollars (S\$) \$6,000 (USD 4,400) are designated small value purchases, which can be sourced directly from suitable suppliers or off-the-shelf, so long as the prices assessed reflect fair market value.¹⁸ Contracts between S\$6,000 and S\$70,000 (USD 52,000) are fulfilled through invitation to quote, which can include both open quotation and limited quotation, where only one or a few selected suppliers are invited to quote.¹⁹ Procurements above S\$70,000 are sourced through invitation to tender, which are further divided into open tender, selective tender and limited tender, which parallel the three award procedures of the GPA as set out in Chapter 2 of this book. Procurement opportunities are published in GeBIZ, a one-stop business centre for suppliers to transact electronically with all Government agencies.²⁰

¹³ WTO, Trade Policy Review Body, Trade Policy Review, Report by the Secretariat: Singapore, WT/TPR/S/343, 7 June 2016, at para. 3.81. Ministry of Finance, Government Procurement, at <https://www.mof.gov.sg/policies/government-procurement>.

¹⁴ Ministry of Finance, above note 13.

¹⁵ WTO, above note 13, at para. 3.81.

¹⁶ GeBIZ, Guide to Singapore Procurement, <https://www.gebiz.gov.sg/singapore-government-procurement-regime.html#guide-for-suppliers>.

¹⁷ WTO, above note 13, at para. 3.81.

¹⁸ Ministry of Finance, Singapore, A Guide for Suppliers Participating in Singapore Government Procurement Opportunities, at p. 6.

¹⁹ Id.

²⁰ Id, at p. 8.

Open tendering is the most common procurement method for purchases above S\$70,000.²¹ Selective tendering, defined as “procurement method whereby only qualified suppliers are invited by a contracting authority to submit a tender”,²² involves a two-stage process with shortlisting of interested suppliers based on their capabilities via an open prequalification exercise, followed by tender or request for proposals from qualified suppliers.²³ In a limited tendering procedure, “the contracting authority contacts a supplier or suppliers of its choice to submit a tender”.²⁴ It can only be used on one of nine grounds defined under Regulation 26 of Government Procurement Regulations, which includes lack of response to previous open or selective calls for tender; only one supplier available due to intellectual property rights; need to ensure compatibility with existing equipment; extreme urgency; and the need for the development of prototypes for research.²⁵ The grounds here are exactly the same as those under the GPA itself, with only minor tweaks in expression.

Audits on compliance with procurement requirements are conducted on a regular basis, with an annual audit by the Auditor-General’s Office (AGO).²⁶ Despite Singapore’s good reputation of a clean government where things are always done according to the rules, there are still some lapses, with the latest report by the AGO identifying problems in IT controls and irregularities in procurement and contract management involving hundreds of contracts worth millions by five ministries.²⁷

Singapore inherited the Common Law tradition from the British and has constantly scored high rankings for its legal system and regulatory framework. For example, according to the 2020 Rule of Law Index compiled by the World Justice Project, Singapore is ranked 12th globally and first in Asia.²⁸ In terms of ease of doing business, Singapore was for many years the first in the world before being overtaken by New Zealand five years ago. While it is in second place at present, its ranking in enforcing contracts is still the highest in the world.²⁹ According to Part III of the GPA, complaints on procurement practices are handled by the Government Procurement Adjudication Tribunal, whose decision is also subject to judicial review.³⁰

III. Procurement of new requirements

²¹ WTO, above note 13, at para. 3.83.

²² Government Procurement Regulations, above note 10, Regulation 2.

²³ Ministry of Finance, above note 18, at 6; WTO, above note 13, at para. 3.83.

²⁴ Government Procurement Regulations, above note 10, Regulation 2.

²⁵ Government Procurement Regulations, above note 10, Regulation 26.

²⁶ WTO, above note 13, at para. 3.85.

²⁷ Grace Ho, Auditor-General finds lapses in procurement, contracts and IT controls in public agencies, Straits Times, 16 July 2019,

<https://www.straitstimes.com/singapore/auditor-general-finds-lapses-in-procurement-contracts-and-it-controls-at-public-agencies>.

²⁸ World Justice Project, Rule of Law Index 2020,

https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

²⁹ World Bank, Doing Business 2020: Singapore,

<https://www.doingbusiness.org/content/dam/doingBusiness/country/s/singapore/SGP.pdf>.

³⁰ Government Procurement Act, above note 9, Section 20.

As a small country with limited or even no local production of many medical supplies, Singapore faced special difficulties when it tried to procure new requirements of such supplies for the pandemic. For example, the production of surgical masks in Singapore stopped 10 years ago.³¹ To ensure supply to front-line medical workers, Singapore had to establish production capacity in a short span of time³² and even shifted mask production lines owned by Singapore companies overseas back home when restrictions on exports of masks were imposed.³³

For the procurement of medical supplies and other products, Singapore reversed its normal practice of open tendering and chose limited tendering, which is a procedure under the GPA (as discussed in chapter 2) and implemented in Singapore that allows direct discussion and award with one or several suppliers without an advertisement. There have been no reports of using other methods, such as extending obligations under existing contracts, probably because existing contracts for medical supplies were quite small due to the small population base of Singapore. For example, in September 2019, the government disclosed that it had a national stockpile of 16 million N95 masks.³⁴ Since then, the exact number of masks in the national stockpile has not been shared by the government, which is concerned that disclosure would compromise Singapore's negotiating position with potential suppliers, endangering its national security.³⁵ This also implies that limited tendering is probably used for most if not all procurements of medical supplies even though the government has never confirmed this.

As noted above, one of the grounds for limited tendering is extreme urgency: more precisely, Regulation 26.2(e) of the Government Procurement Regulations allows this "when it is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the goods or services cannot be obtained in time by means of open tendering or selective tendering". The text here mirrors that of GPA Art. XIII.1.d with only minor tweaks in language. Such general language provides the government with broad discretion to adopt the emergency procedure and is considered to obviate the need to have specific legislation for such a procedure. The policy of using the emergency procedure was confirmed by the official statements of the government, which noted that the COVID-19 emergency made it impractical to conduct open sourcing procurement for medical goods, services and quarantine and treatment facilities on the GeBIZ platform.³⁶ Instead, the relevant agencies "established

³¹ Janice Lim, Made-in-Singapore surgical masks given to frontline healthcare workers in fight against Covid-19: Chan Chun Sing, Today, 6 May 2020,

<https://www.todayonline.com/singapore/made-in-singapore-surgical-masks-given-frontline-healthcare-workers-covid-19-chan-chun-sing>.

³² Calvin Yang, Coronavirus: Singapore boosting production of masks since February, Straits Times, 7 May 2020, <https://www.straitstimes.com/singapore/singapore-boosting-production-of-masks-since-feb>.

³³ Kimberly Anne Lim, Ho Ching clarifies her reaction to Taiwan donating masks to Singapore, AsiaOne, 13 Apr 2020, <https://www.asiaone.com/singapore/ho-ching-clarifies-her-reaction-taiwan-donating-masks-singapore>.

³⁴ 16 million N95 masks available in national stockpile as haze covers Singapore, Channel News Asia, 19 Sep 2019, <https://www.channelnewsasia.com/news/singapore/haze-n95-face-masks-available-national-stockpile-moh-government-11919286>.

³⁵ Natasha Meah, Singapore is building up mask stockpile, but people should not take availability of masks for granted: Chan Chun Sing, Today Singapore, 21 May 2020, <https://www.todayonline.com/singapore/singapore-building-mask-stockpile-people-should-not-take-availability-masks-granted-chan-chun>.

³⁶ Zhangxin Zheng, Govt procurements in Covid-19 period done to respond quickly, processes being scrutinised: Wong, Mothership, 05 June 2020, <https://mothership.sg/2020/06/emergency-procurement-covid-19-primat>.

direct contracts with the suppliers outside GeBIZ who were best able to meet the requirements within the shortest time frame possible”.³⁷ This is possible as Regulation 26.5 of the Government Procurement Regulations 2014 allows the procuring authorities to bypass most procedural requirements such as initial procurement notices and documentation. Nonetheless, government agencies are still required to ensure “there is proper evaluation and necessary approvals are sought” and all procurement transactions during the period will still be subject to audit and compliance reviews.³⁸ Moreover, as required by Art. XVI.2 of the GPA and Regulation 30 of the Government Procurement Regulations 2014, procuring entities must still publish award notices within 72 days of the award and these notices must include detailed information such as “a description of the goods or services procured; the name and address of the procuring entity; the name and address of the successful supplier; the value of the successful tender or the highest and lowest offers taken into account in the award of the contract; the date of award; and the type of procurement method used, and in cases where limited tendering was used in accordance with Article XIII, a description of the circumstances justifying the use of limited tendering”.³⁹ While some questions on the use of emergency procedure were raised by opposition Members of Parliament, they were duly answered by the government and did not result in further controversies.⁴⁰

In addition to using limited tendering for medical supplies, the government also used limited tendering to source other goods and services, such as tracing apps. In May, for example, limited tendering was used by the Government Technology Agency to contract local firm PCI Pte Ltd to supply 300,000 dongles for the TraceTogether Token, a contact-tracing device.⁴¹ In June, GovTech further announced another limited tender for the design and manufacturing of the TraceTogether Token, and more than 20 companies were pre-qualified.⁴² The details of the tender were also made available on GeBIZ, but available only to invited tenderers.⁴³ As mentioned earlier, limited tendering is allowed by the Government Procurement Regulations 2014 in cases of “extreme urgency”. In August, GovTech announced that the award had been

³⁷ Fabian Koh, Government can obtain necessary goods and services for fighting Covid-19 without tender, Straits Times, 5 June 2020, <https://www.straitstimes.com/politics/parliament-government-can-obtain-necessary-goods-and-services-for-fighting-covid-19-without>.

³⁸ Zheng, above note 36.

³⁹ Regulation 30 of the Government Procurement Regulations 2014.

⁴⁰ *Id.* see also Ministry of National Development, Oral Answer by Ministry of National Development on setting up of COVID-19 facilities, 5 June 2020, <https://www.mnd.gov.sg/newsroom/parliament-matters/q-as/view/oral-answer-by-ministry-of-national-development-on-setting-up-of-covid-19-facilities>.

⁴¹ S'pore-based electronics manufacturer PCI secures bid to make GovTech's TraceTogether Tokens, The Online Citizen, 13 June 2020, <https://www.onlinecitizenasia.com/2020/06/13/spore-based-electronics-manufacturer-pci-secures-bid-to-make-govtechs-tracetgether-tokens/>.

⁴² GovTech, TraceTogether Token: Media Statement, 16 Jun 2020, <https://www.tech.gov.sg/media/media-releases/2020-06-16-tracetgether-token-media-statement>.

⁴³ Email from GovTech office (on file with the author), 10 November 2020. See also Annabeth Leow, Over 20 companies pre-picked in limited tender for TraceTogether Token: GovTech, Business Times, 17 Jun 2020, <https://www.businesstimes.com.sg/government-economy/over-20-companies-pre-picked-in-limited-tender-for-tracetgether-token-govtech>.

made to PCI and another bidder.⁴⁴ In the award notice subsequently published in GeBIZ on 30 October 2020,⁴⁵ GovTech noted that the reason for limited tender was because “[p]roducts or services cannot be obtained in time by means of open or selective tendering procedures”. The notice fulfils the requirements under Regulation 30 of the Government Procurement Regulations 2014 and Art. XVI(2) of the GPA, which require a description of the circumstances justifying the use of limited tendering and publication in Singapore’s official paper or electronic medium listed in Appendix III of the GPA, i.e., the Government Gazette and the GeBIZ portal.

To prevent the spreading of the virus, the government imposed two-week quarantine requirements for people arriving from overseas. In addition, for local cases, facilities were needed for their recovery and care. Given the scarcity of land and high population density in Singapore, it was challenge to find sufficient capacities for these purposes. To provide sufficient facilities, the government used emergency procurement procedures for contracting for hotels and fit-out works for government quarantine facilities, community recovery facilities (CRF) and community care facilities (CCF).⁴⁶ This also helped the local hotels, which suffered from low occupancy rates due to the travel restrictions imposed worldwide.

According to National Development Minister Lawrence Wong, while not required by any law or other formal requirement, the agencies still tried to make sure “that the quotes from the commercial partners are reasonable by comparing against market benchmarks, scrutinising the invoices and ensuring that the works meet the standards required by the Government before processing the payments”.⁴⁷ Moreover, in some cases, the agencies were even “able to get private sector companies to support the projects on a cost-recovery basis as part of their contributions to the community”.⁴⁸

It can be noted that in supplying to the private sector, with the pandemic driving up the demands for face masks, thermometers, hand sanitiser, unscrupulous merchants took the opportunity to jack up their prices. For example, in a short span of one and half months, the Consumers Association of Singapore (CASE) received 387 complaints on alleged overcharging of these items.⁴⁹ To combat such practices, the Ministry of Trade and Industry (MTI) exercised its powers under the rarely-used Price Control Act to conduct investigations into the sellers.⁵⁰ In a widely publicized case involving a retailer called 3 Stars, the MTI even sent a formal letter of demand and requested the shop to provide “complete information and documentation explaining the basis of their selling prices”, including “their cost price and profit margins”.⁵¹ In the end, the

⁴⁴ GovTech, TraceTogether Token Limited Tender Award: Media Statement, 21 August 2020, <https://www.tech.gov.sg/media/media-releases/2020-08-21-tracetogogether-token-media-statement-2>.

⁴⁵ GeBIZ, Tender No. GVT000ETT20300025: For the Provision Of Design and Manufacturing Services for Portable Bluetooth Enabled Contact Tracing Device (Pr200830), 30 October 2020.

⁴⁶ Zheng, above note 36.

⁴⁷ Fabian Koh, Govt agencies allowed to obtain Covid-19 supplies without tender, Straits Times, 6 June 2020, <https://www.straitstimes.com/singapore/govt-agencies-allowed-to-obtain-covid-19-supplies-without-tender>.

⁴⁸ Ibid.

⁴⁹ Jalelah Abu Baker, 387 complaints on overcharging of face masks, thermometers, hand sanitisers: CASE, Channel News Asia, 17 February 2020, <https://www.channelnewsasia.com/news/singapore/covid-19-coronavirus-case-complaints-fask-masks-sanitisers-12443210>.

⁵⁰ Channel News Asia, MTI inspects 3 Stars' premises amid complaints of COVID-19 mask profiteering, Channel News Asia, 17 February 2020, <https://www.channelnewsasia.com/news/singapore/coronavirus-covid-19-mti-3-stars-masks-prices-12442304>.

⁵¹ Baker, above note 49.

shop apologized and reduced the prices for the masks, and no formal legal action was taken.⁵²

IV. Modification of contracts to adapt to the pandemic

The first COVID-19 case in Singapore was reported on 23 January 2020, when a 66-year old visitor from China was diagnosed with the virus.⁵³ In view of this, the multi-ministry task force blocked the entry of visitors who had travelled to Hubei in the last 14 days before arrival.⁵⁴ Soon after, the travel restriction was expanded to all visitors with a recent history of travel to China. In February, the first local cases started to emerge, and the government raised the level for its disease alert system - Disease Outbreak Response System Condition (DORSCON) - to Orange, the second highest level.⁵⁵ On 21 March, when Singapore reported its first COVID-19 death,⁵⁶ the city-state further tightened travel restrictions and banned all short-term visitors from entering or even transiting through Singapore.⁵⁷ On 3 April, Prime Minister Lee Hsien Loong announced the beginning of a circuit breaker⁵⁸ - known as lockdown in other places around the world - from 7 April, two days after the number of daily cases jumped to three-digits. During the circuit breaker period, the government closed down all schools and most workplaces, except essential services such as supermarkets, hospitals, transport and utilities. Originally scheduled to end on 4 May, the circuit breaker was further extended on 21 April to 1 June.⁵⁹ Even upon the lifting of circuit breaker on 2 June, life still did not go back to normal and many restrictions still remained, especially those on travel.⁶⁰

As one of the busiest trading hubs in the world, Singapore's trade and businesses were greatly disrupted by these travel restrictions. Moreover, due to its small population base, Singapore also relies heavily on foreign workers for various types of manual labour including for construction and other types of services. For example, more than 100,000 workers from Malaysia

⁵² Channel News Asia, Retailer 3 Stars apologises, reduces face mask prices after MTI inspections, Channel News Asia, 25 February 2020,

<https://www.channelnewsasia.com/news/singapore/covid19-coronavirus-3-stars-mask-prices-mti-12469262>.

⁵³ Michael Yong, Timeline: How the COVID-19 outbreak has evolved in Singapore so far, Channel News Asia, 18 April 2020,

<https://www.channelnewsasia.com/news/singapore/singapore-covid-19-outbreak-evolved-coronavirus-deaths-timeline-12639444>.

⁵⁴ Jalelah Abu Baker, Singapore's circuit breaker and beyond: Timeline of the COVID-19 reality, Channel News Asia, 2 June 2020,

<https://www.channelnewsasia.com/news/singapore/covid-19-circuit-breaker-chronicles-charting-evolution-12779048>.

⁵⁵ Ibid.

⁵⁶ Vanessa Liu, Singapore reports first two coronavirus deaths: A 75-year-old Singaporean woman and 64-year old Indonesian man, Channel News Asia, 21 March 2020,

<https://www.straitstimes.com/singapore/singapore-reports-two-covid-19-deaths-health-minister-gan>.

⁵⁷ Ibid.

⁵⁸ Prime Minister's Office, PM Lee: the COVID-19 situation in Singapore, 3 April 2020,

<https://www.gov.sg/article/pm-lee-hsien-loong-on-the-covid-19-situation-in-singapore-3-apr>.

⁵⁹ Matthew Mohan, COVID-19 circuit breaker extended until Jun 1 as Singapore aims to bring down community cases 'decisively': PM Lee, Channel News Asia, 21 Apr 2020,

<https://www.channelnewsasia.com/news/singapore/covid-19-circuit-breaker-extended-june-pm-lee-speech-apr-21-12662054>.

⁶⁰ Baker, above note 49.

alone cross the border to work in Singapore every day.⁶¹ With the circuit breaker restrictions, businesses in the affected sectors found it hard or even impossible to fulfil their contractual obligations.

In view of this, on 7 April 2020, the first day of the circuit breaker period, the Singapore Parliament passed the COVID-19 (Temporary Measures) Act 2020,⁶² which provides temporary relief for inability to perform contracts in five broad categories: certain loan contracts; event contracts; tourism-related contracts; construction contracts and construction supply contracts⁶³; and leases or licences for non-residential immovable property.⁶⁴ This covers both contracts between private parties and those with the Government.⁶⁵ Contracting parties were also prevented from invoking certain legal remedies such as issuing court or insolvency proceedings, enforcing security or calling on performance, and forfeiting deposits.⁶⁶ Those taking such actions without reasonable excuse will have their actions dismissed or voided.⁶⁷ In addition, taking such actions without reasonable excuse is an offence subject to a fine of up to \$1,000 (USD 700).⁶⁸

In addition to the general relief measures, the government also introduced sector-specific relief measures. One sector for which sector-specific measures have been introduced is the construction sector, where the circuit breaker has resulted in suspension of work at construction sites, operations at housing developers' sales galleries, and home viewings. To help construction firms and developers tide over the difficult period, the government introduced many measures,⁶⁹ which can be grouped into two broad categories, namely:

- i) Measures granting additional time for the commencement, completion and sale of construction projects for developers⁷⁰; and
- ii) Measures facilitating the cash flow for construction firms, such as advance payment for public

⁶¹ Tan Tam Mei, Joyce Lim, Hopes high for Singapore-Malaysia cross-border travel, Channel News Asia, 19 July 2020, <https://www.straitstimes.com/singapore/hopes-high-for-spore-malaysia-cross-border-travel>.

⁶² COVID-19 (Temporary Measures) Act 2020, <https://sso.agc.gov.sg/Act/COVID19TMA2020>.

⁶³ See Ministry of Law, FAQs for Construction Contracts or Supply Contracts, or Any Performance Bond Granted Thereto, What types of construction or supply contracts are covered by the Act?, <https://www.mlaw.gov.sg/covid19-relief/faq/construction>.

⁶⁴ COVID-19 (Temporary Measures) Act 2020, The Schedule: Scheduled contracts.

⁶⁵ Ibid, Section 4.

⁶⁶ Ibid, Sections 5-7.

⁶⁷ Ibid, Sections 8.

⁶⁸ Id.

⁶⁹ Building and Construction Authority, Support Measures for Built Environment Sector Firms, <https://www1.bca.gov.sg/COVID-19/support-measures-for-built-environment-sector-firms>.

⁷⁰ Ministry of National Development, Temporary Relief Measures for Property Sector due to Coronavirus Disease 2019 (COVID-19) Pandemic, 6 May 2020, [https://www.mnd.gov.sg/newsroom/press-releases/view/temporary-relief-measures-for-property-sector-due-to-coronavirus-disease-2019-\(covid-19\)-pandemic](https://www.mnd.gov.sg/newsroom/press-releases/view/temporary-relief-measures-for-property-sector-due-to-coronavirus-disease-2019-(covid-19)-pandemic). These measures were further extended in October and November. See Ministry of National Development, Additional Temporary Relief Measures for Property Sector due to Coronavirus Disease 2019 (COVID-19) Pandemic, 8 Oct 2020, [https://www.mnd.gov.sg/newsroom/press-releases/view/additional-temporary-relief-measures-for-property-sector-due-to-coronavirus-disease-2019-\(covid-19\)-pandemic](https://www.mnd.gov.sg/newsroom/press-releases/view/additional-temporary-relief-measures-for-property-sector-due-to-coronavirus-disease-2019-(covid-19)-pandemic). See also, Building and Construction Authority, [Updated] Circular on the COVID-19 (Temporary Measures) (Amendment No.) Bill, 5 November 2020, <https://www1.bca.gov.sg/docs/default-source/bca-restart/circular-covid-19-temporary-measures-amendment-no-3-bill.pdf>.

sector construction contracts affected by the circuit breaker⁷¹ and shorter payment intervals.⁷²

It is also interesting to note that the COVID-19 (Temporary Measures) Act 2020 explicitly provides in Section 5.13 that the temporary relief provided under the Act does not affect the taking of any other action in relation to the subject inability⁷³, including “an action pursuant to ... a force majeure clause in the contract where applicable”. As the Act does not explicitly make COVID-19 a force majeure event, contractual parties may also invoke the relevant force majeure clauses. In the construction sector in Singapore, the most common standard form contracts used include the International Federation of Consulting Engineers (FIDIC) forms of contract; Singapore Institute of Architects Articles and Conditions of Building Contract (SIA Conditions); Public Sector Standard Conditions of Contract (PSSCOC); and Real Estate Developers’ Association of Singapore Design and Build Conditions of Contract (REDAS Contract).⁷⁴ All of these contracts include force majeure provisions, but none of them explicitly include in their definition an epidemic or pandemic such as COVID-19. At the moment, it is unclear how many firms have invoked the force majeure clauses.

It could be argued, however, that Covid-19 constitutes a “natural catastrophe”, which is one of the possible grounds for a force majeure event under the FIDIC contract. Similarly, the SIA conditions provide possible extension of time for contracts due to “the shortage of labour resulting from domestic or foreign government actions”, which arguably covers the COVID-19 case due to the travel restrictions imposed by the government and ban on construction work during the circuit breaker period. The only obstacle here is that the actions must not have been reasonably foreseen at the date of the contract, which would exclude those contracts entered into post-COVID. The PSSOC provides reliefs for delays caused by “[c]ompliance with the requirements of any law, regulation”, which is satisfied by the government’s COVID-19 restrictions.

V. Security of supply and contractor fraud

1. Security of supply

⁷¹ Building and Construction Authority, Circular on (A) one-off advance payment for ongoing public sector construction contracts affected by the suspension of activities at workplaces due to COVID-19; and (B) passing down of foreign worker levy rebate to work permit and S Pass holders, 7 April 2020, <https://www1.bca.gov.sg/docs/default-source/docs-corp-news-and-publications/circulars/circular-on-advance-payment-and-passing-down-of-foreign-levy-rebate.pdf>.

⁷² Building and Construction Authority, Fortnightly Progress Payment Claims in Public Sector Construction Projects, 4 March 2020, <https://www1.bca.gov.sg/docs/default-source/docs-corp-news-and-publications/circulars/fortnightly-progress-payment-claims-in-public-sector-construction-projects>; These measures were further extended in September. See Building and Construction Authority, Circular on Treatment of Claims Arising from COVID-19 in Public Sector Construction Contracts, 25 September 2020, <https://www1.bca.gov.sg/docs/default-source/bca-restart/circular-treatment-claims-covid-19-public-sector-construction-contracts.pdf>.

⁷³ Defined in the Act as inability to perform an obligation in the contract. See Section 5.1.a of the Act.

⁷⁴ Norton Rose Fulbright, Singapore: Construction force majeure and alternative relief, Force majeure and alternative relief under standard form construction contracts and local law, May 2020, <https://www.nortonrosefulbright.com/en/knowledge/publications/bfe53cf3/singapore-relief-provisions-in-construction-contract-suites>.

As a land-scarce and resource-scarce country, Singapore relies heavily on international trade to meet its basic needs. For example, more than 90% of the food in Singapore is imported.⁷⁵ With the restrictions on trade and transportation imposed due to the pandemic, the supply of essential products such as food and medical products faced major disruptions. To deal with such challenges, Singapore co-sponsored a series of high-level declarations and joint statements with like-minded countries to affirm the importance of free trade and the rules-based multilateral trading system.⁷⁶

In addition, Singapore has also entered into specific arrangements with New Zealand to ensure continuity of trade in essential goods, including medical supplies and foodstuff. In the “Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic” dated 15 April 2020,⁷⁷ Singapore and New Zealand have agreed to various measures to ensure available supply chains and minimal disruptions to trade in goods.

This Declaration by Singapore and New Zealand includes a specific lists of Goods that are covered. Unlike the high-level declarations which merely envision essential goods to include food items, agricultural products and inputs, and medical supplies *generally*, this agreement specifically defines products that are considered essential by both parties, and further distinguishes them, based on how important they are and the rules that should therefore apply to the products.

Goods listed in Annex I of the Declaration (“Annex I Goods”) include certain food preparations, antibiotics, vitamins, medications, vaccines, dressings, pharmaceutical goods, soap,

⁷⁵ Singapore Food Agency, Singapore's Food Supply,

<https://www.sfa.gov.sg/food-farming/singapore-food-supply/the-food-we-eat#:~:text=Singapore's%20Food%20Supply,-The%20Food%20We&text=With%20little%20farming%20land%2C%20Singapore,markets%20mainly%20comes%20from%20overseas.>

⁷⁶ See e.g., Ministry of Foreign Affairs Singapore, ‘Declaration of the Ministerial Coordination Group on COVID-19 on Maintaining Essential Global Links’ (17 April 2020) <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2020/04/18042020-Ministerial-Coordination-Group-on-COVID-19>; World Trade Organization, ‘Responding to the COVID-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products (Revision)’ WT/GC/208/Rev.2, G/AG/30/Rev.2, 20-3862 (29 May 2020) <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/208R2.pdf>; Ministry of Trade and Industry Singapore, ‘Joint Ministerial Statement on Action Plans to Facilitate the Flow of Goods and Services as well as the Essential Movement of People’ (29 May 2020) <https://www.mti.gov.sg/Newsroom/Press-Releases/2020/05/Joint-Ministerial-Statement-on-Action-Plans-to-Facilitate-the-Flow-of-Goods-and-Services>; World Trade Organization, ‘Statement on COVID-19 and the Multilateral Trading System by Ministers Responsible for the WTO’ WT/GC/212/Rev.1 (29 May 2020) <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/212R1.pdf>; World Trade Organization, ‘June 2020 Statement of the Ottawa Group: Focusing Action on COVID-19, Communication from Canada’ WT/GC/217, 20-4263 (16 June 2020) <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/217.pdf>; ASEAN, ‘Hanoi Plan of Action on Strengthening ASEAN Economic Cooperation and Supply Chain Connectivity in Response to the COVID-19 Pandemic’ (26 June 2020) <https://asean.org/hanoi-plan-action-strengthening-asean-economic-cooperation-supply-chain-connectivity-response-covid-19-pandemic/>.

⁷⁷ Ministry of Trade and Industry Singapore, ‘Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic’ (15 April 2020) <https://www.mti.gov.sg/-/media/MTI/Newsroom/Press-Releases/2020/04/Press-Release--Singapore-New-Zealand-Declaration-on-Trade-in-Essential-Goods-FINALv2.pdf>.

washing and cleaning preparations, disinfectants, prepared culture media, surgical gloves, textiles, laboratory glassware, sterilizers, medical instruments and appliances, therapeutic respiration apparatus, equipment related to x-rays, and thermometers. This list is much more comprehensive than the list of personal protective equipment and medical goods Switzerland envisioned, for example, when introducing its own unilateral declaration of temporary elimination of import tariffs in May 2020.⁷⁸ Goods listed in Annex II of the Declaration (“Annex II Goods”) include, *inter alia*, live animals, meat, fish, milk and dairy products, plants, fresh and dried fruits and vegetables, coffee, tea, spices, wheat, flour, edible oils, pasta, jams, yeast, condiments, beer and wine.

As can be seen, with the exception of food preparations for infant use, Annex I Goods consist of medical goods used on the frontline in the fight against COVID-19. Annex I Goods would therefore be more critical than Annex II Goods (essentially food products), and therefore deserving of more protection and measures to ensure unrestricted trade of such goods.

Following this reasoning, both parties have agreed to a set of a stricter measures for Annex I Goods. First, they have agreed to eliminate all customs duties and charges of any kind for such goods, within the meaning of Article II:1(b) of the General Agreement on Tariffs and Trade (GATT) 1994.⁷⁹ In addition, they will not apply export prohibitions or restrictions on Annex I Goods, within the meaning of Article XI:1 of the GATT 1994.⁸⁰

In contrast, the parties have only agreed to *endeavour* not to apply export prohibitions or restrictions for Annex II Goods, unless they fall within exceptions set out in GATT 1994.⁸¹ Where export prohibitions or restrictions are introduced, parties must give advance notice.⁸² In effect, in light of COVID-19, this means that parties can easily introduce export prohibitions on Annex II Goods by relying on, *inter alia*: (i) Article XI:2(a) of the GATT 1994, on the basis that the party needs to prevent or relieve critical shortages of foodstuffs;⁸³ or (ii) Article XX(b) of the GATT 1994, arguing that such restrictions are necessary in light of COVID-19 to protect human life or health.⁸⁴ These would, of course, be subject to certain conditions being met under the respective exceptions.

With respect to non-tariff barriers, however, the parties’ commitments do not differentiate between Annex I and Annex II Goods – parties only commit to *intensifying*

⁷⁸ In contrast to the Annex I Goods, Switzerland’s own unilateral declaration covers only HS Chapters 28; 38; 39; 40; 48; 61; 62; 63; 65; and 90. See, WTO document G/MA/W/154 (27 May 2020) <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/MA/W154.pdf&Open=True>.

⁷⁹ See Paragraph 1 of the Declaration.

⁸⁰ See Paragraph 2 of the Declaration.

⁸¹ See Paragraph 8 of the Declaration.

⁸² See Paragraph 9 of the Declaration.

⁸³ GATT, Article XI:2(a).

⁸⁴ GATT, Article XX:b.

consultations with a view to removing such barriers.⁸⁵ This is probably due to the complex nature of the non-tariff barriers, which often involves other important public policy considerations such as public safety and health and are within the turfs of government agencies other than the trade ministry. In addition, for both Annex I Goods and Annex 2 Goods, parties agree to similarly expedite and facilitate the flow and transit of all products through their air and sea ports,⁸⁶ as well as endeavour to expedite the release of such products upon arrival, including introducing measures to speed up the processing of import documentation.⁸⁷

Finally, the Declaration requires parties to periodically review the Declaration paragraphs and the product coverage in Annex I and Annex 2, and allows for updating of the Annexes to incorporate additional products.⁸⁸

The agreement is a significant one and beneficial for Singapore for a number of reasons. Singapore is New Zealand's largest trading partner in South East Asia, and seventh-largest trading partner globally.⁸⁹ In the year ending December 2018, bilateral trade between the countries amounted to NZ\$5.2 billion (USD 3.6 billion). Securing a continued partnership during the pandemic was crucial, especially at a time when many others were choosing to adopt protectionist measures. As was noted by the High Commissioner of New Zealand to Singapore, the real benefit of this agreement is that food arrives from New Zealand to Singapore, and medical supplies and other goods are sent from Singapore to New Zealand.⁹⁰ The first freight flight to Singapore from New Zealand after the signing of the Declaration saw 20 tonnes of chilled meat arriving in Singapore, including lamb and beef, while subsequent flights would carry more meat, as well as fruits and eggs.⁹¹ Ultimately, for a country which relies on imports for most of its food supplies, such an agreement is extremely beneficial during times of pandemic.

Singapore and New Zealand, despite being small countries, have a long history of pioneering in rule-making efforts at the international level. For example, it was Singapore and New Zealand, along with Chile, that first created the Trans-Pacific Strategic Economic

⁸⁵ See Paragraph 3 of the Declaration.

⁸⁶ See Paragraph 4 of the Declaration.

⁸⁷ See Paragraph 5 of the Declaration.

⁸⁸ See Paragraph 13 of the Declaration.

⁸⁹ New Zealand Foreign Affairs and Trade, 'CEP overview'. Retrieved from <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/nz-singapore-closer-economic-partnership/cep-overview/>.

⁹⁰ Jo Tyndall, High Commissioner of New Zealand to Singapore, S'pore and New Zealand: Standing together amid Covid-19 challenges, Straits Times, 1 May 2020, https://www.straitstimes.com/opinion/spore-and-new-zealand-standing-together-amid-covid-19-challenges?xtor=CS3-18&utm_source=STiPhone&utm_medium=share&utm_term=2020-05-01%20%3A05%3A37.

⁹¹ Lena Loke, 'New Zealand sends first batch of essential supplies to Singapore, as part of pact to keep trade flowing amid Covid-19', TODAY Online, 22 April 2020, <https://www.todayonline.com/singapore/new-zealand-sends-first-batch-essential-supplies-singapore-part-pact-keep-trade-flowing>.

Partnership Agreement (P4 Agreement) in 2005 to “act as a benchmark for trade liberalization among APEC economies and create a demonstration effect for the WTO”.⁹² The P4 Agreement later morphed into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, one of the largest mega-FTAs the world has ever seen. 15 years later, it was also Singapore’s initiative, along with New Zealand and Chile, to create the Digital Economy Partnership Agreement, in order to “set forward-looking standards on digital trade, and establish new international approaches to support the digital economy and trade in the digital era.”⁹³ Going forward, it would not be surprising for the approach taken by the two countries in the Declaration on Trade in Essential Goods sets the example for “Inverse-Exceptions”⁹⁴ which helps all countries in their ongoing fight against the pandemic. That’s probably why the Declaration also includes an open-accession clause, welcoming the participation “by any Member of the WTO, or State or separate customs territory in the process of acceding to the WTO.”⁹⁵

2. Contractor fraud

Despite its generally good reputation⁹⁶, Singapore is not entirely immune to contractor fraud cases. A survey by PwC in 2020 covering both public and private organisations found 21 per cent of Singapore organisations reported procurement and vendor fraud, which is just slightly lower than the 22 per cent global figure.⁹⁷ Often fraud cases are perpetrated by the contractor alone and do not involve wrongdoing on the part of procurement officers and in the cases where the officer collaborated in the fraud in Singapore it was sometimes due to a special relationship between the officer and contractor, such as the husband-and-wife fraud case reported in 2018, as mentioned below.⁹⁸

Singapore’s approach to combat contractor fraud includes the following:

⁹² For the early history of the P4 Agreement, see Henry Gao, ‘The Trans-Pacific Strategic Economic Partnership Agreement: High Standard or Missed Opportunity?’. (2009). Trade-led Growth: A Sound Strategy for Asia: Papers presented at the 5th Anniversary Conference of ARTNeT "Trade-Led Growth in Times of Crisis", 2-3 November 2009. 79-95. Research Collection School of Law. Available at: https://ink.library.smu.edu.sg/sol_research/973.

⁹³ Ministry of Trade and Industry Singapore, ‘Singapore leads the way in new Digital Economy Partnership Agreement with Chile and New Zealand’ (17 May 2019) <https://www.mti.gov.sg/Newsroom/Press-Releases/2019/05/Singapore-leads-the-way-in-new-Digital-Economy-Partnership-Agreement-with-Chile-and-New-Zealand>.

⁹⁴ Mona Pinchis-Paulsen, ‘COVID-19 Symposium: Thinking Creatively and Learning from COVID-19- How the WTO Can Maintain Open Trade on Critical Supplies’ (OpinioJuris, 2 April 2020) <http://opiniojuris.org/2020/04/02/covid-19-symposium-thinking-creatively-and-learning-from-covid-19-how-the-wto-can-maintain-open-trade-on-critical-supplies/>.

⁹⁵ See paragraph 11 of the Declaration.

⁹⁶ For example, Singapore was ranked as the 4th least corrupt countries in the world in Transparency International (TI) Corruption Perceptions Index in 2019. See The Corrupt Practices Investigation Bureau, Singapore Maintains High Score for Transparency International Corruption Perceptions Index 2019, 23 January 2020, [https://www.cpiib.gov.sg/press-room/press-releases/singapore-maintains-high-score-transparency-international-corruption#:~:text=The%20Transparency%20International%20\(TI\)%20Corruption,which%20Singapore%20has%20successfully%20maintained.](https://www.cpiib.gov.sg/press-room/press-releases/singapore-maintains-high-score-transparency-international-corruption#:~:text=The%20Transparency%20International%20(TI)%20Corruption,which%20Singapore%20has%20successfully%20maintained.)

⁹⁷ PwC’s Global Economic Crime and Fraud Survey - Singapore report: Economic crime reported by Singapore-based companies converges towards global average, 2020, <https://www.pwc.com/sg/en/publications/assets/global-economic-crime-and-fraud-survey-2020-sg.pdf>, at 8.

⁹⁸ Shaffiq Alkhatib, Technical officer jailed 45 months for cheating PUB into awarding contracts worth almost \$2m, Straits Times, 27 November 2018, <https://www.straitstimes.com/singapore/courts-crime/technical-officer-jailed-45-months-for-cheating-pub-into-awarding-contracts>.

First, the procurement laws explicitly provide for the disqualification of suppliers for fraud. For example, the Government Procurement Regulations provides that a supplier *may* be excluded from participation in a procurement for furnishing “any false information or document to the contracting authority”, conviction of “any offence involving fraud, dishonesty or moral turpitude” or commitment of “professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier”⁹⁹, although exclusion is not mandatory in law. There is no public information available on how these powers are exercised in practice.¹⁰⁰

Second, there are procedural safeguards and the system has been reformed when problems have come to light. For example, when it was discovered that the contractor fraud by a husband and wife was committed through abuse of the small value purchase procurement process at the Public Utilities Board, the Board swiftly moved to reduce the number of small value purchases by 96%, combining them into aggregated contracts awarded through open tender.¹⁰¹ The small number of remaining small value purchasers are now administered centrally by officers with no involvement in operational duties, while the potential suppliers are generated randomly by the computer system.¹⁰² More generally, the MOF also has various guidelines to ensure procurement integrity, with the main method being segregation of procurement roles and responsibilities to ensure checks and balances.¹⁰³ Two important steps in the procurement process are the evaluation and approval of procurement tenders, which must be conducted by different persons according to MOF guidelines.¹⁰⁴ Complex tenders are evaluated by a team of officers, while those above S\$80,000 (USD 59,000) in value must be approved by a tender board comprising a minimum of three senior officers.¹⁰⁵ In addition, officers with procurement responsibilities are subject to periodic rotation.¹⁰⁶

Thirdly, there are also strong monitoring and enforcement mechanisms. These include the annual audit by the Auditor-General's Office, with the latest report for 2019 noting mainly procedural lapses but no fraud or corruption among public officers.¹⁰⁷ Investigations are conducted on cases identified by the Auditor-General's annual report, with disciplinary actions such as reprimand or warning given for cases of negligence, and legal action taken to prosecute more serious cases such as fraud.¹⁰⁸

So far, no contractor fraud cases have come to public attention with regard to procurement during the COVID-19 period but there is no specific information on whether this has been a problem.

⁹⁹ Government Procurement Regulations, above note 10, Regulation 13.4.

¹⁰⁰ In the issues arising from this kind of discretionary debarment see Arrowsmith, Sue, Constructing Rules on Exclusions (Debarment) Under a Post-Brexit Regime on Public Procurement: A Preliminary Analysis (July 24, 2020). Available at SSRN: <https://ssrn.com/abstract=3659909> or <http://dx.doi.org/10.2139/ssrn.3659909>.

¹⁰¹ Alkhatib, above note 101.

¹⁰² Ibid.

¹⁰³ Ministry of Finance, What safeguards are there to minimise the risk of procurement fraud? https://www.ifaq.gov.sg/mof/apps/fcd_faqlmain.aspx?FAQ=36616.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Grace Ho, Auditor-General flags lapses in IT controls, procurement, contracts, 17 June 2019, <https://www.straitstimes.com/singapore/auditor-general-flags-lapses-in-it-controls-procurement-contracts>.

¹⁰⁸ Ministry of Finance, Addressing Procurement Lapses, 13 August 2012, <https://www.mof.gov.sg/Newsroom/Parliamentary-Replies/Addressing-Procurement-Lapses>.

VI. Use of procurement for industrial or social objectives

As the pandemic has wreaked havoc in the economy, some governments have started to use procurement as a tool of industrial or social policy. This is, however, not the case in Singapore. There is no system-wide initiative to use procurement to stimulate the economy or to divert contracts to local firms, for example. Instead of using public procurement as a policy tool, government support packages have tended to address the economic problems directly with wage credits and hiring incentives. This is a sound approach as it targets directly the problems and avoids inefficiencies and other problems that might arise with indirect incentives such as procurement¹⁰⁹.

Of course, this does not necessarily preclude some procurement from contributing to various industrial or social objectives. For example, by renting hotel rooms to serve as quarantine facilities for arriving travellers and foreign workers, the Singapore government also helped to keep the hospitality industry afloat as many hotels suffer from low occupancy rates during the pandemic. However the crucial difference with the policies adopted in some other countries is that such procurement was mainly done to meet the needs of quarantine, rather than to support the hotels.

Another initiative with positive spill-over effects is the decision by the government to boost its ICT spending. With people-to-people physical action reduced by the pandemic, digital technologies started to gain prominence. Thus, in June 2020, the Singapore government announced that it would increase its fiscal 2020 ICT spend by 30% to S\$3.5 billion (US\$2.6 billion).¹¹⁰ This is not only to facilitate the adoption of digital technologies, but also to help businesses recover from the COVID-19 pandemic, with small and medium-sized businesses (SMBs) expected to participate in 80% of these procurement opportunities.¹¹¹

As these measures are system-wide policies rather than sector-specific, they are unlikely to run afoul WTO obligations such as those under the Subsidy and Countervailing Measures Agreement. Moreover, given Singapore's good track record, they also seem likely to be done in a way consistent with the requirements of the GPA.

VII. The pandemic as a catalyst for procurement reforms

In some countries, the pandemic has helped to shed light on general problems with the procurement system, including its ability to handle emergency procurement, and provide a catalyst for wider reform. This, however, is not the case for Singapore as, with a "siege mentality" that almost amounts to paranoia,¹¹² seems to be well prepared to handle potential emergencies,

¹⁰⁹ See, for example, the review by S. Arrowsmith, "Horizontal Policies in Public Procurement: a Taxonomy" (2010) 10 *Journal of Public Procurement* 149.

¹¹⁰ Eileen Yu, Singapore government ups ICT spending by 30% to fuel post-pandemic recovery, digital transformation, *By the Way*, 9 June 2020, <https://www.zdnet.com/article/singapore-government-ups-ict-spending-by-30-to-fuel-post-pandemic-recovery-digital-transformation>.

¹¹¹ *Ibid.*

¹¹² For more discussions on Singapore's "siege mentality", see Peter Ho, *The Challenges of Governance in a Complex World*, IPS-Nathan Lectures III: The Paradox of Singapore and the Dialectic of Governance, 3 May 2017,

including pandemics. In the procurement context the existing rules and procedures, which already provided for emergency procurement procedures, were duly invoked to obtain what was needed.

VIII. Reflections

In general, Singapore has coped well with the pandemic, despite being a small country with few resources and production capacity. This was achieved partly through Singapore's efficient procurement policies and practices, which also provide some interesting lessons.

A first lesson is the value of adopting emergency procurement procedures from early on. While open tendering had been the norm before the crisis hit, at the onset of pandemic, the Singapore government quickly made the decision to switch to emergency procurement procedures, especially limited tendering. In view of the global shortage of requirements such as masks, the government proactively sourced for supplies and even considered local manufacturing options.¹¹³ This ensured that Singapore obtained the new requirements very quickly, a matter of great importance to a country with limited resources. At the same time, the procuring agencies also worked hard to conduct proper evaluations to make sure of compliance with procurement requirements. It is unclear whether emergency procurements have led to more breaches and lapses, something which can only be assessed once the dust settles. Questions can also be raised over the continuation of emergency procurement procedures, as emergencies, by definition, cannot last long; it may be advisable for the government to shift to normal procurement procedures for items with envisaged long-term needs, including PPE items, tracing devices and apps, and quarantine and care facilities.

A second useful very measure was the adoption of legislation to provide contracting parties with temporary relief for inability to perform contracts and suspending the availability of certain legal remedies. Such legislative measures address the potential problems in procurement and other contracts in a systemic way and pre-empts the myriad of legal disputes which could arise as contracting parties are thrown into disarray amid the pandemic. It provides a better solution than simply relying on force majeure clauses, which often come with considerable ambiguity and rarely provide explicit cover for pandemics. The only problem, however, is that such legislative interventions are supposed to be, as suggested by the title of the Singapore Act, temporary. One cannot help wondering that, if COVID-19 turns out to be the "new normal", the "temporary" Act will become a more permanent fixture.¹¹⁴ If that turns out to be the case, there might need to be a more thorough rethinking of contract law as we know today so as to ensure

at

https://lkyspp.nus.edu.sg/docs/default-source/default-document-library/mr-peter-ho-s-speech22ad087b46bc6210a3aaff0100138661.pdf?sfvrsn=a5116a0a_0.

¹¹³ Calvin Yang, Coronavirus: Singapore looking for new sources of masks, looking at manufacturing them locally, Straits Times, 19 February 2020,

<https://www.straitstimes.com/singapore/coronavirus-singapore-looking-for-new-sources-of-masks-looking-at-manufacturing-them>.

¹¹⁴ Indeed this is what is happening in Singapore, as the government extended many of the measures with the introduction of the COVID-19 (Temporary Measures) (Amendment No. 3) Bill on 2 November 2020. See 2nd Reading Speech by Minister Desmond Lee on the COVID-19 (Temporary Measures) (Amendment No. 3) Bill, 3 November 2020,

[https://www.mnd.gov.sg/newsroom/parliament-matters/speeches/view/2nd-reading-speech-by-minister-desmond-lee-on-the-covid-19-\(temporary-measures\)-\(amendment-no.-3\)-bill](https://www.mnd.gov.sg/newsroom/parliament-matters/speeches/view/2nd-reading-speech-by-minister-desmond-lee-on-the-covid-19-(temporary-measures)-(amendment-no.-3)-bill).

fairness to all parties involved.

The third and final point to emphasise is the creative use of trade agreements to secure supplies of essential goods. Singapore's bilateral agreement with New Zealand, the first of its kind in the world, has obvious symbolic value as it bucks the trend of trade protectionism and sets an example for free trade. However, it is more than just being symbolic. Instead, the Declaration, by listing in detail the specific products deemed to be "essential products", and by differentiating between medical products and food products into two annexes with different obligations, has provided a practical model for countries around the world to follow in concluding such "Inverse-Exceptions" agreements. Further, they do not even need to draft their own agreement and can just sign on to the Declaration pursuant to its open-accession clause.