

COVID-19 (Temporary Measures) (Amendment) Bill on Rental Relief Frameworks for SMEs

To complement the financial measures announced in the Fortitude Budget on 26 May 2020 ("**Fortitude Budget**"), the Parliament of Singapore has on 5 June 2020 tabled and passed the COVID-19 (Temporary Measures) (Amendment) Bill ("**Amendment Bill**") which amends the COVID-19 (Temporary Measures) Act 2020 ("**Act**"). The Amendment Bill seeks to provide a rental relief framework for small and medium enterprises (each a "**SME**" and collectively, "**SMEs**") and to enhance the relief available for businesses, organisations and individuals who are unable to fulfil their contractual obligations because of COVID-19. The Amendment Bill is published on the Parliament of Singapore's website and can be found [here](#). The Amendment Bill should be read together with the press release issued by the Ministry of Law on 3 June 2020 ("**MinLaw Press Release**") which provides further information on some of the measures covered by the Amendment Bill. The MinLaw Press Release can be found [here](#).

Scope

Under the Amendment Bill, numerous measures targeted at providing relief to tenants of non-residential properties have been introduced. Their scope covers, broadly, the following:

(A) Mandated Rental Waivers For Qualifying SME Tenants

As announced under the Fortitude Budget, cash grants pertaining to qualifying SME tenants will be disbursed by the Government to help offset some of their rental obligations.

The Amendment Bill provides for the mechanism by which such cash grants are to be disbursed as well as the respective stakeholders' obligations in ensuring that the benefit of the cash grants is received by the qualifying SME tenants.

Under the Amendment Bill:

- (a) the cash grants will be disbursed by the Inland Revenue Authority of Singapore ("**IRAS**") to the owners of the qualifying properties. There can be no appeal from IRAS's decision whether or not to disburse the cash grant;
- (b) before disbursement of the cash grant, IRAS must issue to qualifying property owners a notice of cash grant ("**Notice of Cash Grant**") which will specify the address of the qualifying SME tenants at the relevant property;
- (c) upon receipt of the Notice of Cash Grant, a qualifying property owner must, within a prescribed timeframe (to be prescribed by the Minister for Law ("**Minister**")), serve a copy of the Notice of Cash Grant on (i) its relevant qualifying SME tenants, if it is the direct landlord of those SME tenants; or (ii) if it is not the direct landlord of the relevant qualifying SME tenants, such tenant(s) of the qualifying property owner or such other persons as may be prescribed; and
- (d) if a tenant which is not the qualifying SME tenant receives a copy of the Notice of Cash Grant, it is also required, within a prescribed time (to be prescribed by the Minister) to serve a copy of the

Notice of Cash Grant on (i) its relevant qualifying SME sub-tenants, if it is the direct landlord of those SME sub-tenants; or (ii) if it is not the direct landlord of the relevant qualifying SME sub-tenants, such sub-tenant(s) of the tenant or such other persons as may be prescribed.

This is to ensure that the Notice of Cash Grant is ultimately received by the qualifying SME tenant or sub-tenant (as the case may be). It should be noted that any person who without reasonable excuse fails to serve the Notice of Cash Grant within the prescribed time (to be prescribed by the Minister), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$1,000.

(A1) Government Funded Rental Waiver

Under the new Section 19H introduced by the Amendment Bill, on the date that the qualifying property owners receive the Notice of Cash Grant, the prescribed amount of rent payable for the relevant prescribed period under the lease agreement for the property between each tenant of that property and the tenant's landlord will be treated as waived. Based on the Fortitude Budget and MinLaw Press Release, it would appear that the rent waiver contemplated ("**Government Assisted Rental Relief**") would comprise the following:

- (i) for qualifying SME tenants of qualifying commercial properties (e.g., shops) – a total of two months' waiver of their base rental¹ for the months of **April and May 2020**; and
- (ii) for qualifying SME tenants of other non-residential properties (e.g., industrial and office properties) – a total of one month's waiver of their base rental for the month of **April 2020**.

It should be noted that the amount of rental relief is not limited to or determined by the amount of cash grant disbursed by IRAS.

To qualify for the Government Assisted Rental Relief, a tenant must meet the following criteria:

- (i) the tenant must be a SME (with not more than \$100 million in annual turnover²);
- (ii) the lease must not have been entered into or renewed (other than automatically or pursuant to an option to renew) on or after 25 March 2020 and must have been in force on 1 April 2020; and
- (iii) such other criteria as may be prescribed by the Minister.

If the qualifying SME tenant has already paid any rent for the relevant rental waiver periods, then the rent payable by such tenant for the remaining period of the lease is to be reduced by the amount already paid. If the reduction is not possible or if there is any balance left after the reduction, the qualifying SME tenant may recover the amount paid or balance from its landlord as a debt owed to it.

Any landlord may apply in the prescribed form and manner within the prescribed timeframe (to be prescribed by the Minister) for the appointment of a rental relief assessor to make a determination whether the tenant is a qualifying SME tenant who has met the prescribed criteria for the Government Assisted

¹ Base rent excludes any Gross Turnover payable and maintenance fee and charges for the provision of services such as cleaning and security.

² This will be based on Corporate Tax and Individual Income Tax returns for the Year of Assessment 2019.

Rental Relief. Landlords should note that a notice by an IRAS officer that the tenant is or is not a qualifying SME tenant is *prima facie* evidence of that fact.

A copy of the application for a rental relief assessor's determination must be served within the prescribed time (to be prescribed by the Minister) on all other landlords (including the property owner) and tenants of the relevant property. The rental relief assessor's determination is binding on all the landlords (including the property owner) and tenants of the relevant property, and no appeals will be allowed. Parties are to bear their own costs for proceedings before the rental relief assessor, and no representation by lawyers before the rental relief assessors is permitted (except with the permission of the assessor).

If the rental relief assessor determines that the tenant does not qualify for the Government Assisted Rental Relief, every tenant of the relevant property will not receive the Government Assisted Rental Relief and will remain liable to its landlord for any rentals waived. If any tenant has already had any amount of its rent reduced under this scheme, such amount would be recoverable from the tenant as a debt due to its landlord.

(A2) Landlord Funded Rental Waiver

In addition to the Government Assisted Rental Relief, landlords will also be required to provide, out of their own pockets, further rental waivers to qualifying SME tenants who meet certain additional criteria.

Under the new Section 19J introduced by the Amendment Bill, on the date that the qualifying property owners receive the Notice of Cash Grant, a prescribed amount of rent payable for the relevant prescribed period under the lease agreement for the property between each tenant of that property and the tenant's landlord will be treated as waived. It would appear from the Fortitude Budget and the MinLaw Press Release that the waiver ("**Additional Landlord Rental Relief**") comprises the following:

- (i) for qualifying SME tenants of qualifying commercial properties (e.g., shops) – a total of two months' waiver of their base rental for the months of **June and July 2020**; and
- (ii) for qualifying SME tenants of other non-residential properties (e.g., industrial and office properties) – a total of one month's waiver of their base rental for the month of **May 2020**.

It should be noted that the amount of rental relief is not limited to or determined by the amount of cash grant disbursed by IRAS.

To qualify for the Additional Landlord Rental Relief, a tenant must meet the following criteria ("**Prescribed Additional Rental Waiver Criteria**"):

- (i) the tenant must be a SME at the group level (≤\$100 million turnover in 2019);
- (ii) the tenant must have incurred a substantial drop in average monthly revenue during COVID-19 (average monthly revenue from April to May 2020 on an outlet level reduced by 35% or more, compared to April to May 2019);
- (iii) the lease must not have been entered into or renewed (other than automatically or pursuant to an option to renew) on or after 25 March 2020 and the lease must have been in force on 1 April 2020; and

- (iv) such other criteria as may be prescribed by the Minister.

If the qualifying SME tenant has already paid any rent for the relevant rental waiver periods, then the rent payable by such tenant for the remaining period of the lease is to be reduced by the amount already paid. If the reduction is not possible or if there is any balance left after the reduction, the qualifying SME tenant may recover the amount paid or balance from its landlord as a debt owed to it.

Any landlord may apply in the prescribed form and manner within the prescribed time (to be prescribed by the Minister) for the appointment of a rental relief assessor to make any of the following determinations with regard to the Additional Landlord Rental Relief:

- (i) whether the tenant is a qualifying SME tenant who has met the Prescribed Additional Rental Waiver Criteria. Landlords should note that a notice by an IRAS officer that the tenant is or is not a qualifying SME tenant is *prima facie* evidence of that fact; and
- (ii) whether the applicant landlord satisfies the prescribed criteria (to be prescribed by the Minister) for a reduction of the Additional Landlord Rental Relief. Based on the MinLaw Press Release, it appears that a landlord will have to show that it is unable to provide the additional rental waiver on grounds of financial hardship (taking into consideration whether the landlord's rental income forms a substantial part of its income and the annual value of the property) to qualify for a reduction in the Additional Landlord Rental Relief.

It should be noted that, under the new Section 19U introduced by the Amendment Bill, landlords have the power to require a tenant to provide prescribed information or documents within a prescribed timeframe (to be prescribed by the Minister) for the purposes of determining whether the tenant is a qualifying SME tenant, or for making an application for a rental relief assessor's determination.

A copy of the application for a rental relief assessor's determination must be served within the prescribed timeframe (to be prescribed by the Minister) on all other landlords (including the property owner) and tenants of the relevant property. The rental relief assessor's determination is binding on all the landlords (including the property owner) and tenants of the relevant property, and no appeals will be allowed. Parties are to bear their own costs for proceedings before a rental relief assessor, and no representation by lawyers before the rental relief assessors is permitted (except with the permission of the assessor).

If the rental relief assessor determines that the tenant does not qualify for the Additional Landlord Rental Relief, every tenant of the relevant property will not receive the Additional Landlord Rental Relief and will remain liable to its landlord for the rentals waived. If any tenant has already had any amount of its rent reduced under this scheme, such amount would be recoverable from the tenant as a debt due to its landlord.

If the rental relief assessor determines that the landlord qualifies for the reduction in the Additional Landlord Rental Relief, then the waivers to be granted to the tenant will be reduced accordingly. Based on the MinLaw Press Release, it appears that qualifying landlords will only be required to provide half of the waivers under the Additional Landlord Rental Relief i.e., one month's waiver of base rental for qualifying commercial properties and half a month's waiver of base rental for qualifying industrial and office properties.

Based on the MinLaw Press Release, the rental waivers to be granted under the Government Assisted Rental Relief and the Landlord Additional Rental Relief may be offset against any previous direct monetary assistance provided by the landlord to the tenant (or sub-tenant) from February 2020 onwards and/or any passing of the property tax rebate from the property owner to the tenant. According to the Minister, what constitutes "direct monetary assistance" for the purposes of the offset will be prescribed in subsidiary legislation.

(B) Moratorium On Rent Recovery Against Qualifying SME Tenants

Under the new Section 19G introduced by the Amendment Bill, there is to be a moratorium ("**Moratorium**") on the taking of certain actions by landlords against their qualifying SME tenants in relation to non-payment of rent. Such prohibited actions include: (a) the commencement or continuation of an action in court and/or arbitral proceedings against the tenant or the tenant's guarantor or surety; (b) the termination of the lease agreement; (c) the exercise of a right of re-entry or forfeiture under the lease agreement; and (d) the withholding of utility services or other services from the tenant. The Moratorium is for the period starting on the date of commencement of a new Section 15 introduced by the Amendment Bill and ending on the earlier of: (a) the date of the Notice of Cash Grant; and (b) a prescribed date (to be prescribed by the Minister) ("**Moratorium Period**").

The Moratorium applies regardless of whether the qualifying SME tenant has or had previously served any notification of relief pursuant to Section 5 of the Act.

Any court proceedings, arbitral proceedings or such other prescribed proceedings in relation to the non-payment of rent that are pending at the start of the Moratorium Period must be stayed on the application by the qualifying SME tenant until the end of the Moratorium Period.

(C) Repayment Scheme for Rental Arrears For Qualifying SME Tenants

Under the new Section 19P introduced by the Amendment Bill, tenants that qualify for the Additional Landlord Rental Relief may also elect to serve a written notice ("**Repayment Notice**") on their landlords to take up a statutory repayment schedule ("**Repayment Schedule**") for rental arrears ("**Repayment Scheme Relief**").

To qualify for the Repayment Scheme Relief, the following criteria must be met:

- (a) the tenant must qualify for the Additional Landlord Rental Relief;
- (b) the Repayment Schedule must satisfy all of the following requirements:
 - (i) the outstanding rent must be for any period during the period starting on 1 February 2020 and ending on the last date of the prescribed period under Section 3 of the Act (i.e., currently 19 October 2020 but which may be extended by the Minister). The outstanding rent will be the aggregate of the rent payable for such period that is outstanding taking into account the rents waived under the Government Assisted Rental Relief and the Additional Landlord Rental Relief, up to a prescribed amount (to be prescribed by the Minister);

- (ii) the interest or other charge payable on the outstanding rent must not exceed the prescribed interest rate or amount (the MinLaw Press Release suggests that the prescribed interest rate is 3% per annum);
 - (iii) the maximum repayment period provided under the Repayment Schedule must be the shorter of: (aa) a period not exceeding a prescribed period (the MinLaw Press Release suggests that this prescribed period is 9 months); and (bb) the remaining period of the lease agreement;
 - (iv) the Repayment Schedule must provide for payment of the outstanding rent (and interest or other charges thereon) in equal repayment instalments;
 - (v) the payment of the first repayment instalment must start after the service of the Repayment Notice and no later than a prescribed date (the MinLaw Press Release suggest that this prescribed date is 1 November 2020); and
 - (vi) any other prescribed conditions.
- (c) the Repayment Notice must be served on or before the last date of the prescribed period under Section 3 of the Act (i.e., currently 19 October 2020 but which may be extended by the Minister) on (i) the qualifying SME tenant's landlord; (ii) any guarantor or surety for the qualifying SME tenant's obligation in the lease agreement; and (iii) any other person as may be prescribed.

Where the tenant qualifies for the Repayment Scheme Relief, the Repayment Schedule would form part of the lease agreement between the tenant and the landlord and would prevail over any terms of the lease agreement to the extent of any inconsistency between them.

The Repayment Scheme Relief will be cancelled upon the occurrence of any of the following events (each, a "**Cancellation Event**"):

- (a) the tenant fails to make a payment under the Repayment Schedule within a prescribed time after the date the instalment becomes due under the Repayment Schedule;
- (b) the tenant terminates or repudiates the lease agreement during the repayment period in the Repayment Schedule; or
- (c) the landlord terminates the lease agreement for any default by the tenant other than the failure to make a payment under the Repayment Schedule.

Upon the occurrence of any Cancellation Event, the tenant will be required to immediately pay to the landlord the remaining outstanding rental arrears under the Repayment Schedule and all interest and other charges that would have accrued on the outstanding rental arrears as of the date of the Cancellation Event had the Repayment Schedule not formed part of the lease agreement, less any interest paid on the outstanding rental arrears pursuant to the Repayment Schedule.

(D) Restrictions Against Deductions Of Security Deposit Furnished By Qualifying SME Tenants

Under the new Section 19S introduced by the Amendment Bill, landlords of qualifying SME tenants will, during the period starting from the date of commencement of Section 15 introduced by the Amendment Bill and ending on the last date of the prescribed period under Section 3 of the Act (i.e., currently 19 October 2020 but which may be extended by the Minister) ("**Restriction Period**"), be restricted from drawing down the security deposit furnished by such tenants to discharge any outstanding rent or other moneys payable or for any other default under the lease agreement (where such outstanding rent or other moneys are payable for the period or the default occurs during the period starting on 1 February and ending on the last date of the prescribed period under Section 3 of the Act (i.e., currently 19 October 2020 but which may be extended by the Minister)), such that the remaining amount of the security deposit after the drawing down is less than an amount representing one month of rent ("**SD Deduction Restriction**").

Where the landlord had made or makes any draw down during the period starting 1 February 2020 and ending on the date immediately before the date of commencement of Section 15 introduced by the Amendment Bill, the tenant must (a) where the landlord had drawn down the security deposit fully, or (b) where the landlord had drawn down the security deposit partially and the balance of the security deposit is less than one month rent, replenish the security deposit such that the balance of the security deposit amounts to one month of rent.

Subject to the tenant's obligation to replenish the security deposit such that the balance of the security deposit amounts to one month of rent as set out above, where a tenant had given a Repayment Notice to take up the Repayment Scheme Relief, such tenant's obligation under the lease agreement to replenish the security deposit does not have effect until the earlier of: (a) the expiry of the prescribed repayment period under the Repayment Scheme Relief; and (b) the cessation of the Repayment Scheme Relief.

(E) Relief For Tenants Unable To Vacate Business Premises

Under the new Section 7B introduced by the Amendment Bill, tenants (not limited to qualifying SME tenants) may apply for a relief against having to pay to the landlord any sums (in excess of an amount to be prescribed by the Minister) that such tenant would otherwise be liable to pay under the law or contract for failing to vacate the property after the termination or expiry of the lease and before the expiry of the prescribed period under Section 3 of the Act (i.e., currently 19 October 2020 but which may be extended by the Minister) ("**Holding Over Relief**").

To qualify for the Holding Over Relief, the tenant must meet the following criteria:

- (a) the tenant must serve a notification for relief pursuant to Section 5 of the Act on the landlord;
- (b) the contract must be a lease of non-residential immovable property which has not been entered into or renewed (other than automatically or pursuant to an option to renew) on or after 25 March 2020;
- (c) the obligation to vacate the property is to be performed between 1 February 2020 and the expiry of the prescribed period under Section 3 of the Act (i.e., currently 19 October 2020 but which may be extended by the Minister);
- (d) the tenant must be unable to vacate the property due to the COVID-19 pandemic; and

(e) such other conditions as may be prescribed.

It should be noted that the Holding Over Relief will not apply if the notification for relief is withdrawn, or an application is made by the landlord to an assessor and the assessor makes a determination that the case in question is not one where the non-vacating tenant is entitled to the Holding Over Relief.

Relief from late payment interest or other charge

Under the new Section 7A introduced by the Amendment Bill, relief would also be afforded to certain contracts where a non-paying party has served a notification of relief under Section 5 of the Act of its inability to pay any money at the time it becomes due and payable, being a time within the prescribed period starting on 20 April 2020 and ending on the last date of the prescribed period under Section 3 of the Act (i.e., currently 19 October 2020 but which may be extended by the Minister). In such a case, there will be a cap on the late payment interest and charges (to be prescribed by the Minister) that such non-paying party will be liable to the counterparty entitled to the late payment interest and charges for, regardless of what is provided in the contract.

It is not yet clear whether lease agreements would be included in the description of contracts to which this new Section 7A applies, but assuming that lease agreements are included, then tenants may also be able to apply for such relief for a cap on the late payment interest and charges that it would be liable to the landlord for in respect of rental arrears, even if a higher interest rate or charge is provided for in the lease agreement, subject to the tenants satisfying the criteria for such relief under the new Section 7A.

Implications

For Landlords

While the new relief measures described above may pose certain challenges for landlords, landlords should keep in mind that they are introduced with the view of ensuring the survivability of the SME tenants, which in turn would benefit landlords in the long term.

Landlords who receive notifications from tenants claiming relief should review these closely to understand the parties' respective positions, and where appropriate, seek further information or clarification from the tenants.

Landlords who satisfy the prescribed criteria (as described in the section on Additional Landlord Rental Relief above) may submit an application for a rental relief assessor's determination for a reduction in the amount of the Additional Landlord Rental Relief they would be required to provide.

For Tenants

Tenants should consider whether they meet the prescribed criteria before submitting their claims for relief. In particular, tenants should keep in mind that, under the Amendment Bill, a landlord has the power to require a tenant to provide information and documents in relation to certain relief measures, and that they have to comply with such requirements except where it is under a statutory obligation to observe secrecy.

As the relief measures are temporary, tenants would do well to review their position regularly and make such preparations as may be necessary, so that they will be in a position to operate and continue with their obligations after the relief period ends.

As landlords and tenants share a symbiotic relationship, it would be to their mutual benefit to take the practical approach of working together and helping each other in these unprecedented times.

As the situation in relation to the COVID-19 pandemic is evolving, landlords and tenants should keep abreast with the latest advisories / press releases / materials issued by the relevant ministries and government agencies.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partner:



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