

Leases/Licences under the Re-Align Framework

Introduction

In November 2020, the Ministry of Law announced the introduction of the Re-Align Framework (“**Framework**”) under the new Part 10 of the COVID-19 (Temporary Measures) Act 2020 (“**Act**”) to assist businesses impacted by the COVID-19 pandemic.

The Framework enables businesses to renegotiate certain contracts to realign themselves with the current economic climate, and will come into effect for six weeks commencing from 15 January 2021 until and including 26 February 2021.

The Framework is applicable to, *inter alia*, leases or licences for non-residential immovable property for a term not exceeding five years (“**Specified Leases/Licences**”, and each a “**Specified Lease/Licence**”) ¹ which are specified contracts under the Second Schedule of the Act (each a “**Specified Contract**”).²

Re-Align Framework

Criteria and Eligibility

The business (“**Affected Business**”) must meet two criteria to be eligible under the Framework:³

- (a) its annual revenue for the financial year 2019 must not exceed S\$30 million on a global group basis; and
- (b) it must have experienced at least a 70% fall in monthly average gross income for July to December 2020, compared to July to December 2019.

The Framework will only apply to a contract that:⁴

- (a) is governed by Singapore law;
- (b) was entered into before 25 March 2020;
- (c) has at least one party who has a place of business in Singapore; and
- (d) is a Specified Contract under the Second Schedule of the Act (e.g., the Specified Leases/Licences).

¹ Part 1, paragraphs 1(a) and 2(e), Second Schedule of the Act.

² Part 1, Second Schedule of the Act.

³ Part 3, paragraph 1, Second Schedule of the Act, as prescribed in the Ministry of Law press release on 10 December 2020: <https://www.mlaw.gov.sg/news/press-releases/2020-12-10-re-align-framework-commencement#fn1>. With regard to the second criterion, alternative periods will be used if the business had not commenced operations during July to December 2019 or by July 2020. However, the business must have commenced operations (i.e., be in a position to earn revenue) by 1 September 2020 to be eligible.

⁴ Section 42(1) of the Act.

The Framework will not apply to any Specified Leases/Licences which have been terminated before 2 November 2020. However, where a Specified Lease/Licence is terminated on or after 2 November 2020 under any other laws or under the terms of the Specified Leases/Licences, and the Affected Business subsequently serves a Notice of Negotiation (please see below), the terms of termination under the Framework will apply.⁵

Tenants that had qualified under the rental relief framework introduced in the COVID-19 (Temporary Measures)(Amendment) Act 2020 (*not covered in this note*) can still qualify for relief under the Framework as long as they meet the Framework's criteria.⁶

Process for Renegotiation and Scope of Relief

The process for renegotiation and/or termination of the Specified Leases/Licences is as follows:

- (a) a Notice of Negotiation must be served⁷ on all of the following parties: any other party to the Specified Lease/Licence ("**Other Party**") including (where applicable) the Affected Business's guarantor, surety and any assignee of any other Party to the Specified Lease/Licence, by 26 February 2021;⁸ and
- (b) parties have a four-week period ("**Negotiation Period**") after the date of the Notice of Negotiation to renegotiate the terms of the Specified Lease/Licence.

The Affected Business may also withdraw its Notice of Negotiation at any time before the termination of the Specified Lease/Licence under the Framework.⁹

During the Negotiation Period, the parties are to renegotiate the terms of the Specified Lease/Licence (for example, a renegotiation of rent, payment of outstanding arrears, shortening the term of the lease, and altering terms such as decreasing the amount of security deposit or allowing deposits to offset outstanding arrears)¹⁰ and/or the terms of termination of the Specified Lease/Licence, where applicable.

⁵ Section 42(2) of the Act; Ministry of Law press release on 10 December 2020: <https://www.mlaw.gov.sg/news/press-releases/2020-12-10-re-align-framework-commencement#fn1>.

⁶ Parliamentary Debates, 03 November 2020, Volume No 95, Sitting 12: <https://sprs.parl.gov.sg/search/sprs3topic?reportid=bill-484>.

⁷ To serve the Notice of Negotiation using the electronic system, the Affected Business must have the email address(es) of the Recipient(s); and either a Corporate Pass or SingPass. The links will only be available from 15 January 2021: <https://www.mlaw.gov.sg/realign/process-renegotiation#step1>.

⁸ Section 45 of the Act; Ministry of Law press release on 10 December 2020: <https://www.mlaw.gov.sg/news/press-releases/2020-12-10-re-align-framework-commencement#fn1>.

⁹ Section 48(1) of the Act.

¹⁰ Paragraph 8 of the FAQs: [Process for Renegotiation of Contract Terms and Termination of Contract \(mlaw.gov.sg\)](#).

Moratorium

When a Notice of Negotiation has been served and while negotiations are in progress, the Other Party is prohibited from taking legal and enforcement actions (e.g., court and arbitration proceedings, or termination of the contract) against the Affected Business for failure to perform any contractual obligations (e.g., payment of outstanding rent). The prohibition will end on the earliest of the following:

- (a) eight weeks after the service of the Notice of Negotiation, if no other notices including the Notice of Objection¹¹ are served and lodged;
- (b) on the occurrence of any of the following events after the expiry of eight weeks after the service of the Notice of Negotiation:
 - (i) the day the Notice of Negotiation is withdrawn;
 - (ii) the day the only or last Notice for Adjustment¹² is withdrawn;
 - (iii) the day the Notice of Compensation¹³ is withdrawn, if no Notice of Objection or no Notice for Adjustment is served and lodged;
 - (iv) where the adjustment relief Registrar determines that no adjustment relief assessor needs to be appointed; or
 - (v) the day on which an adjustment relief assessor has made all the determinations required to be made in relation to the Notice of Negotiation.¹⁴

Unsuccessful Renegotiation

Where parties are unable to successfully renegotiate within the four-week Negotiation Period, there are three courses of action for the Other Party or its assignee:

- (a) The Other Party may lodge a Notice of Objection with the adjustment relief Registrar objecting to the Notice of Negotiation only on one or more of the following grounds:
 - (i) the contract in question is not a Specified Contract or is a contract of national interest;

¹¹ Section 46 of the Act: After the Negotiation Period, the Other Party may serve a Notice of Objection if it objects to the eligibility of the Affected Business. Please refer to paragraph (a) under “*Unsuccessful Renegotiation*”.

¹² Section 47 of the Act: Where parties are unable to successfully negotiate within the Negotiation Period and no Notice of Objection was lodged and served, and parties do not agree with the default terms of termination provided for under the Framework (as defined in paragraph (b)(i) under “*Unsuccessful Renegotiation*”) and are unable to reach an agreement amongst themselves, the Affected Business, the Other Party or the Other Party’s assignee may lodge and serve a Notice of Adjustment, within two weeks after the end of the Objection Period, to request that an adjustment relief assessor determine the issue. Please refer to paragraph (b)(ii) under “*Unsuccessful Renegotiation*”.

¹³ Section 51 of the Act: Eligible landlords may seek compensation from their tenants who had served a Notice of Negotiation, for the early termination of the Specified Lease/Licence, by serving a Notice of Compensation. Please refer to paragraph (c) under “*Unsuccessful Renegotiation*”.

¹⁴ Part 1 of the Fifth Schedule of the Act.

- (ii) the Affected Business does not satisfy the eligibility criteria for relief; and
- (iii) the Notice of Negotiation was not served in accordance with Section 45 of the Act.¹⁵

The Notice of Objection must be served within two weeks after the negotiation period (“**Objection Period**”) on the Affected Business and other parties to the Specified Lease/Licence including (where applicable) the Affected Business’s guarantor, surety or the issuer of a performance bond or its equivalent and any assignee of any other party.¹⁶

Consequently, an adjustment relief assessor appointed by the Ministry of Law will decide on: (A) the Affected Business’s eligibility for the Framework; and (B) the parties’ obligations upon termination.¹⁷

Until the issue is determined, parties cannot terminate the Specified Lease/Licence and their obligations persist.

- (b) If the Other Party does not lodge and serve a Notice of Objection within the two-week Objection Period, the Specified Lease/Licence will be deemed to be terminated two days after the Objection Period ends, in accordance with the following terms:¹⁸
 - (i) The Specified Lease/Licence will be terminated on a set of default “just and fair terms” (“**default terms of termination**”) provided for in Part 4 of the Second Schedule of the Act, subject to any adjustment on a just and fair basis by an adjustment relief assessor.¹⁹ The Affected Business will remain liable for outstanding obligations but will not need to pay early termination penalties.²⁰ Such default terms of termination include, *inter alia*, that:
 - (A) the tenant must pay rent up to the date of termination, pro-rated if necessary;
 - (B) the tenant must reinstate the premises in accordance with the contract and deliver vacant possession on or before termination. Otherwise, the tenant will need to pay any sum set out in the lease agreement or compensate the landlord for any losses suffered; and
 - (C) the landlord can offset accrued liabilities against the security deposit and any advance payments but must return any remainder within four weeks after termination.²¹

¹⁵ Section 46(2) of the Act.

¹⁶ Section 46 of the Act; <https://www.mlaw.gov.sg/realign/process-renegotiation>.

¹⁷ The adjustment relief assessor will hear the issue over email, unless the interests of justice would be better served by an online or physical hearing.

¹⁸ Section 49(1) of the Act.

¹⁹ Section 43(2) of the Act.

²⁰ The Affected Business might still have to pay compensation to the Other Party if the Other Party is a landlord that qualifies for compensation under the Framework: see paragraph (c) under “*Unsuccessful Renegotiation*”.

²¹ Annex C (Terms of Contract Termination) of the Ministry of Law press release on 10 December 2020: <https://www.mlaw.gov.sg/news/press-releases/2020-12-10-re-align-framework-commencement#fn1>.

- (ii) However, if the parties do not agree with the default terms of termination and are unable to reach an agreement amongst themselves, the Affected Business, the Other Party or the Other Party's assignee may lodge and serve a Notice of Adjustment, within two weeks after the end of the Objection Period, to request that an adjustment relief assessor determine the adjustment of rights and obligations under the Specified Lease/License on a just and fair basis.²²
- (c) Where the Affected Business is a tenant who has served a Notice of Negotiation on his landlord (the Other Party in this case) and the landlord is an eligible landlord ("**Eligible Landlord**") who wishes to seek compensation from the Affected Business for its termination of the contract under the Framework, the Eligible Landlord may lodge with the adjustment relief Registrar and serve on the Affected Business a Notice for Compensation within two weeks after the Negotiation Period (i.e., the same period as the Objection Period). This requires the Affected Business to pay additional compensation to the Eligible Landlord for early termination of its Specified Lease/Licence.²³ This compensation is to be determined by an adjustment relief assessor.²⁴ Landlords should take note of the following:
 - (i) a landlord must meet the following requirements in order to qualify as an Eligible Landlord:
 - (A) the landlord must be:
 - (1) an individual;
 - (2) a sole proprietor; or
 - (3) a company incorporated solely to hold the interest in the immovable property in question, and owned only by one or more individuals and sole proprietors;
 - (B) the landlord must depend on rent for a significant portion of his income, such that the average monthly rental income from the property is more than 50% of his monthly average income; and
 - (C) the landlord's annual individual income must not exceed S\$107,500.²⁵
 - (ii) If the Eligible Landlord wishes to dispute the tenant's eligibility for relief (as an Affected Business) but at the same time wishes to obtain compensation from the tenant if the contract is ultimately terminated under the Framework, the landlord must lodge and serve both a Notice of Objection and a Notice for Compensation within the Objection Period.²⁶

²² Sections 47(1), 59, and 66(6) of the Act.

²³ Section 51 of the Act.

²⁴ Section 66(7) of the Act.

²⁵ Part 2, paragraph 1, Third Schedule of the Act, with amounts prescribed based on the Ministry of Law Press Release dated 10 December 2020: <https://www.mlaw.gov.sg/realign/key-features>.

²⁶ Section 51(3) of the Act; <https://www.mlaw.gov.sg/realign/process-renegotiation>.

Determinations by the adjustment relief assessor

Determinations by the adjustment relief assessor are binding on all parties and their assignees and are not appealable.²⁷ Such determinations may, with leave of the court, be enforced in the same manner as a judgment or an order of court.²⁸ A person who, without reasonable excuse, fails to comply with any determination binding on the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.²⁹

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 any of the following Partners:



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²⁷ Section 68(3)-(4) of the Act. However, note that if a party to a contract or his assignee is absent from the hearing and had a good reason for being absent and wishes to set aside the assessor's decision or determination, he may submit an Application to Set Aside Decision/Determination within 5 days of the adjustment relief assessor's decision:
<https://www.mlaw.gov.sg/realign/assessor-determinations>.

²⁸ Section 68(1) of the Act.

²⁹ Section 68(5) of the Act.

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