

**Amendments to the COVID-19 (Temporary Measures) Act 2020
Measures for Rental Relief and Other Reliefs for Tenants**

Updated as of 25 June 2020

1. In connection with the Fortitude Budget presented in Parliament on 26 May 2020, the COVID-19 (Temporary Measures) (Amendment) Bill (the “**Bill**”) was read and passed in Parliament on 5 June 2020 and enacted into the COVID-19 (Temporary Measures) (Amendment) Act 2020 (the “**Amendment Act**”) on 16 June 2020. As of 20 June 2020, the majority of the provisions in the Amendment Act have come into force. The Amendment Act amends the COVID-19 (Temporary Measures) Act 2020 (the “**COVID-19 Act**”).
2. These amendments seek to provide, amongst other things, a rental relief framework for Small and Medium Enterprises (“**SMEs**”) tenants. This rental relief framework aims to help affected SMEs who need more time and support to recover from the impact of COVID-19, by providing mandated co-sharing of rental obligations between the Government, landlords and tenants.
3. In this update, we provide a summary of the various components of the rental relief framework for SMEs which may be applicable to you as either a Landlord or an SME tenant and is categorised into the following:
 - a. Rental relief framework for eligible SMEs by way of Government Assistance and additional relief for tenants; and
 - b. Further considerations, such as (i) Statutory Repayment Scheme for unpaid rent (ii) tenants’ inability to vacate premises and (iii) enhancement to Assessor’s power in determination proceedings.

Rental Relief Framework for Eligible SMEs by way of Government Assistance and Additional Relief for Tenants

2. The COVID-19 Act now provides that eligible SME tenants in the commercial sectors (such as shops) can now expect to receive a total of four months of rent waived i.e. April 2020 to July 2020 and eligible SME tenants in industrial and office properties can expect a total of two months of rent waived i.e. April 2020 to May 2020. Such reliefs will be borne by the Government and landlord equally. For example, SME tenants in commercial sectors will be granted two months rental waiver borne by the Government through Government Assistance, and additional rental relief of two months rental waiver borne by landlord through additional rental relief.
3. In order to qualify for rental relief, qualifying SME tenants (including sub-tenants and licensees) will have to ensure that they have an annual turnover of \leq \$100 million¹ **and** have a tenancy in force on 1 April 2020 that must have either been entered into before 25 March 2020 or automatically renewed after 25 March 2020 by way of contract renewal.
4. The *additional* rental relief borne by the landlord will only apply provided SME tenants (including sub-tenants and licensees) have incurred a substantial drop in average monthly revenue from April 2020 to May 2020 by 35% or more, compared to April and May 2019 as a result of COVID-19 pandemic. The Ministry of Law provides that landlords will be informed of

¹ This is assessed based on the SMEs’ Corporate Tax and Individual Income Tax returns for the YA 2019.

whether they are statutorily obliged to bear such additional relief starting end-July 2020 through IRAS.

5. Landlords are not encouraged to take steps against a SME tenant for non-payment of rents for those periods in each relevant sector. SME tenants who are unable to pay their rent due to COVID-19 and who require protection from legal or enforcement proceedings may serve a Notification For Relief under the existing COVID-19 Act so that landlords cannot terminate the lease or take any action prohibited under the COVID-19 Act on the basis of non-payment.
6. If a landlord is not satisfied that the SME tenant is eligible for additional rental relief, the landlord will have the opportunity to apply to have an Assessor determine whether the SME tenant satisfies the eligibility criteria. A brief overview of the Assessor's powers and enhancements in the COVID-19 Act is summarised below. Landlords suffering from financial hardship may also seek an assessment if they are unable to provide additional rental waiver.

Further Considerations

Repayment Scheme for Rental Arrears

7. To mitigate the impact of rental payments, the COVID-19 Act also allows for a new Statutory Repayment Scheme. Eligible SME tenants will be able to serve notice on their landlords to take up prescribed repayment schemes for a specified portion of rental arrears accumulated from 1 February 2020 up to 19 October 2020. This portion of outstanding rental arrears accumulated between such time can be repaid in instalments over the remainder of the lease for a maximum of 9 months, with interest capped at 3% per annum. SME tenants must service the first instalment no later than 1 November 2020.
8. If a SME tenant fails to make payment under the Statutory Repayment Scheme, or terminates the lease, landlords will be entitled to immediate payment of all arrears or take steps under contract for rentals unpaid.

Inability to Vacate Business Premises

9. The COVID-19 Act also introduces a temporary respite for all tenants (not just SME tenants) who are unable to vacate their business premises at the end of their lease term and before the expiry of the prescribed period i.e. 19 October 2020. Tenants will not be penalised for failing to vacate the property provided they serve a Notification For Relief on the landlord and meet other prescribed conditions. Tenants must be able to demonstrate that its inability to vacate the premises was to a material extent caused by the COVID-19 pandemic.

Assessor's Powers to Determination Proceedings

10. Currently, a party who requires relief under the COVID-19 Act must serve a Notification for Relief. A Notification for Relief can be served by a tenant or landlord, depending on the circumstances. Where a landlord is unable to afford rental waiver, landlords may seek an assessment by the Assessor on the grounds of financial hardship.
11. In addition, landlords who disagree with the Notification for Relief may then make an application to an Assessor to have the Notification for Relief assessed and are only able to do so upon being served with a Notification for Relief. If the Assessor is satisfied, the Assessor will approve the application and parties will attend a hearing to have the application determined.

12. The amendments to the COVID-19 Act seeks to enhance the Assessor's determination proceedings by (i) expanding the scope of determinations an Assessor can make (ii) vary or make further determinations after an initial determination (iii) order that a party be represented by an advocate or solicitor and (iv) providing that all parties be bound by a duty of confidentiality.

We hope that the above summary has been useful for you. Kindly note that this update is for your general information only and does not constitute legal advice. Should you require specific legal advice or professional guidance in respect of the above, please do not hesitate to reach out to us.

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