

Corporate Real Estate

Measures and Relief against COVID-19 and their Impact on Property Owners and Tenants

Introduction

A suite of relief measures has been rolled out by the Government through the Unity Budget, the Resilience Budget and the Solidarity Budget (collectively, the "**Budgets**") given the COVID-19 outbreak. Amongst other things, the measures include property tax rebates for owners of eligible properties and rental waivers for tenants of Government agencies. To supplement these measures, the Government, on 7 April 2020, passed the COVID-19 (Temporary Measures) Act 2020 (the "**Act**"). The Act provides targeted and temporary relief for parties that, due to the ongoing COVID-19 outbreak, find themselves unable to perform obligations under the scheduled contracts.

COVID-19 (Temporary Measures) Act 2020

Leases or Licences for Non-Residential Immovable Property

The list of the scheduled contracts is set out in the Schedule of the Act. In a rare case of retroactive legislation, the measures under the Act will cover contractual obligations in the scheduled contracts that have to be performed on or after 1 February 2020, where the scheduled contract was entered on or before 25 March 2020.

One of the scheduled contracts include leases or licences for non-residential immovable property. For such leases or licences, a party who is unable to perform its obligations (provided that the inability is to a material extent caused by the COVID-19 event) and has given a "Notification for Relief" to the counterparty and its guarantor (if any), will be granted temporary relief from performing those obligations for a prescribed period. The issue of whether a party's inability to perform its contractual obligations is to a material extent caused by the COVID-19 event is a fact specific inquiry to be determined on a case-by-case-basis. The prescribed period will initially be for a period not exceeding six months from the commencement of the Act and may be subsequently extended or shortened. During this prescribed period, there is a moratorium imposed on the counterparty from taking action arising from the defaulting party's failure to perform its obligations.

Contribution Note: This Client Update was written by Norman Ho, Senior Partner, Corporate Real Estate, with contributions from Marcus Tay, Associate, and Dickson Lim, Practice Trainee, from Corporate Real Estate.



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To illustrate, if a tenant of a retail clothing store is unable to pay rent for the months of May and June 2020 (such inability being to a material extent caused by the COVID-19 event) and has provided a "Notification for Relief" to the landlord and the tenant's guarantor under the lease (if any), the landlord is prohibited from, amongst other things, (i) terminating the lease; (ii) repossessing the leased premises; and/or (iii) commencing or continuing court or insolvency proceeding against the tenant or its guarantor during the prescribed period. If the landlord contravenes this moratorium without reasonable excuse, the landlord shall be guilty of an offence and liable on conviction to a fine not exceeding S\$1,000.

It is important to recognise that the Act does not absolve or extinguish the contractual obligations of the parties but rather suspends the performance of such for a prescribed period. Using the above illustration, the rent owed by the tenant of the retail clothing store to the landlord for the months of May and June 2020 will accumulate during the prescribed period and will be due on expiry of the prescribed period. By deferring rent obligations to a later date, it is hoped that such measures will help to alleviate cash flow difficulties tenants may face because of the COVID-19 event. This is not to say that the cash flow difficulties faced by tenants will be transferred to landlords because of the moratorium. Landlords may set-off the security deposit against rental owed by tenants if tenants are unable to pay rent during the prescribed period.

Dispute as to Eligibility of Relief

If there is a dispute as to eligibility for relief, any party – likely the landlord who receives a "Notification of Relief" – may submit it to an assessor for determination, whose decision is final and not appealable. The assessor will be appointed by the Minister of Law, and there shall be no representation by any advocate and solicitor in respect of the proceedings before the assessor. Any person who without reasonable excuse fails to comply with the determination of the assessor shall be guilty of an offence and liable on conviction to a fine not exceeding S\$1,000.

Property Tax Rebate

Another aspect of the Act is to compel property owners (insofar as their property is eligible for property tax rebates) to pass on the property tax rebates to their tenants/licensees fully.

Listed below are the property tax rebates granted in respect of qualifying properties for the period from 1 January 2020 to 31 December 2020:

- (a) 100% rebate: Hotel rooms or function rooms of a hotel registered under the Hotels Act (Cap. 127), serviced apartments or serviced apartments function room, Meeting, Incentive Travel, Conventions and Exhibition venues, cruise centres / terminals, tourist attractions, shops, restaurants, warehouse retail, amusement centre, cinema, sports and recreational buildings, schools (inclusive of child care centre and kindergarten), health and medical buildings, hostel and boarding / guest houses, workers' dormitories, shophouses, carpark of retail mall, hotel, serviced apartment etc. For an exhaustive list of qualifying properties under this limb (a), please refer to Appendix A of the IRAS e-Tax Guide, Property Tax Rebate for Non-Residential Properties in 2020 found [here](#).

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- (b) 60% rebate: Marina Bay Sands and Resorts World Sentosa.
- (c) 30% rebate: Other non-residential properties such as offices, industrial properties, warehouses, business or science parks and petrol stations. For an exhaustive list of qualifying properties under this limb (a), please refer to Appendix B of the IRAS e-Tax Guide, Property Tax Rebate for Non-Residential Properties in 2020 found [here](#).

The passing on of the rebates by the property owner to their tenants/licensees may be by way of cash payment (lump sum or instalment) or by way of an off-set against the rent/licence fee payable by the tenant/licensee or a combination of both. Property owners must not subject the passing of the rebate to any conditions. Any such condition which the property owner purports to impose will be void. Property owners must also retain records to prove that the rebates were indeed passed on for a period of three years. If the property owners fail to pass the rebates to their tenants/licensees or fail to comply with the record-keeping obligation, the property owner shall be guilty of an offence and liable on conviction to a fine not exceeding S\$5,000.

The Inland Revenue Authority of Singapore will be sending out rebate notices by 31 May 2020 and owners of qualifying properties can expect to receive the rebates by 30 June 2020.

Dispute in Relation to the Passing on of Property Tax Rebate

Any disputes concerning the passing on of property tax rebates (e.g. whether such rebate is required to be passed on, the manner, amount, extent of time of the passing of such rebate) will be adjudicated by a Valuation Review Panel (comprising members from the Valuation Review Board constituted under the Property Tax Act (Cap. 254)). Determinations made by the Valuation Review Panel may be appealable to the High Court. An application to the Valuation Review Panel must be made no later than 12 months after the end of the period to which the remission relates.

Budget – Enhanced Rental Waivers

As part of the Budget, the Government has also announced that tenants of Government agencies or their appointed operators will be entitled to the following rental waivers:

- (a) Three months waiver: Stallholders of hawker centres and markets.
- (b) Two months waiver: Commercial tenants.
- (c) One month waiver: Industrial, office and agricultural tenants.

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Conclusion

These are unprecedented times for property owners and tenants. In the long run, it may be better for parties to adopt a conciliatory approach and come to a mutually acceptable arrangement in respect of any non-performance of contractual obligations. This is as opposed to parties relying on their strict contractual remedies, which may only bring short term gains, and the measures under the Act, which merely delays the resolution of the problems the parties are facing to a later date.

For more information on other legal remedies that contracting parties may have in light of the COVID-19 outbreak, please refer to our Client Update released in February titled "FAQ on COVID-19 and its Potential Impact on Contracts" found [here](#).

For more articles and updates from our teams across the region on COVID-19 and related legal issues, please visit [Rajah & Tann Asia's COVID-19 Resource Centre](#).

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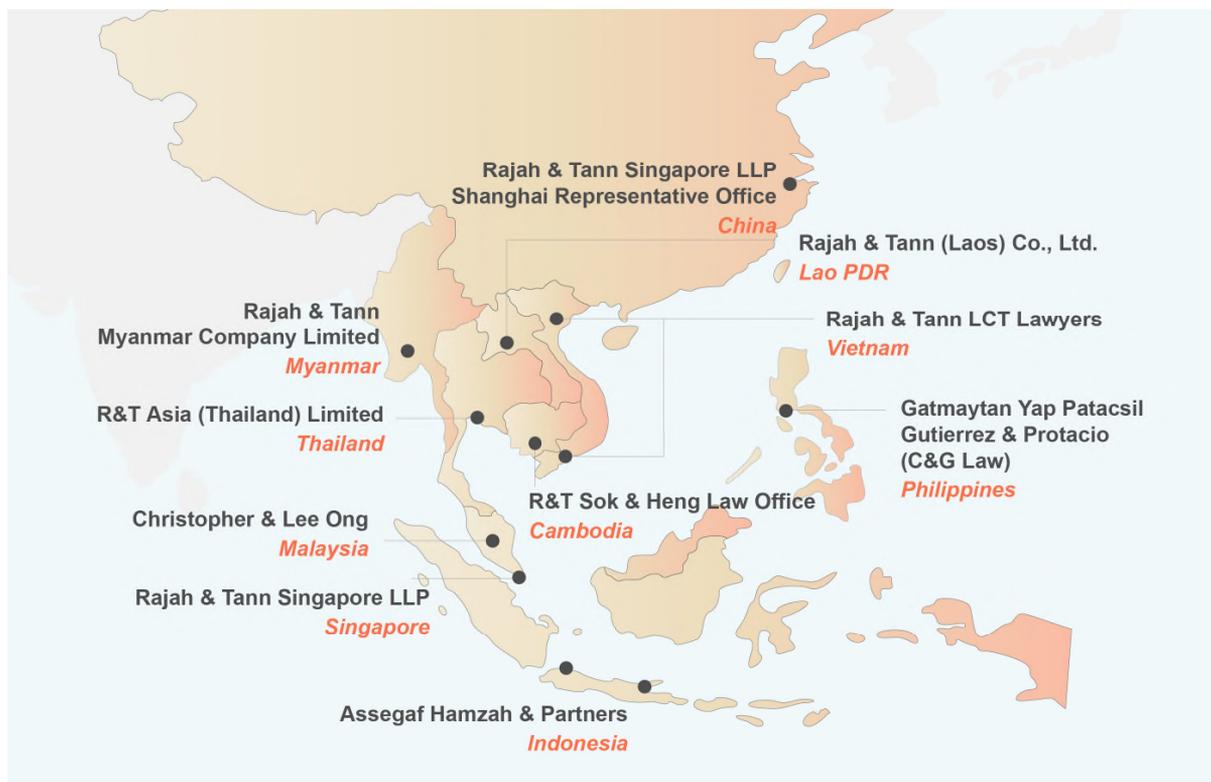
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