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Changes to COVID-19 (Temporary Measures) Act: Re-align Framework, Additional Reliefs for Built Environment Sector, Fine-tuning Property Tax Rebate Regulations

Introduction

On 3 November 2020, amendments to the COVID-19 (Temporary Measures) Act ("**Act**") were passed in Parliament to supplement the temporary reliefs provided in the Act in the following key aspects:

- (a) introduction of a new re-align framework for eligible businesses which are significantly affected by COVID-19 to renegotiate specified contracts ("**Re-Align Framework**");
- (b) introduction of additional reliefs for the Built Environment sector in the forms of:
 - (i) a universal extension of time to the completion date for eligible construction contracts;
 - (ii) co-sharing of qualifying costs arising from COVID-19 related project delays for eligible construction contracts; and
 - (iii) an avenue for property developers to seek an extension of date of delivery of possession of property and provision of the right for purchasers affected by COVID-19 related delay in delivery of their units to seek compensation from property developers,(collectively "**BE Sector Reliefs**"); and
- (c) fine-tuning the application of the property tax rebate regulations to take into account the rental relief framework provided in Part 2A of the Act.

By way of background, the Act was enacted in April 2020 to introduce a series of legal reliefs and mechanisms for businesses and individuals to aid them in managing the impact of the COVID-19 pandemic. Since then, the Act has been amended to keep pace with the changing circumstances of the pandemic, and to provide necessary clarifications and enhancements.

The latest round of changes is set out in the [COVID-19 \(Temporary Measures\) \(Amendment No. 3\) Bill](#) ("**Bill**") which was passed in Parliament on 3 November 2020. The changes have yet to come into force.

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This Update highlights the salient features of the key changes to be introduced by the Bill and the issues addressed by these new measures.

Re-Align Framework

The Re-Align Framework provides for an efficient and fair avenue for an eligible party of a specified contract who has difficulty in performing its obligations under the contract as a result of COVID-19 to renegotiate the terms of the contract with the counterparty.

If the parties to the specified contract cannot agree on the revised terms, they are entitled to other statutory reliefs such as termination of the contract or the revision of payment schedules under the contract as discussed below.

Eligible businesses covered under the Re-Align Framework

The Re-Align Framework intends to cover:

- smaller and micro enterprises which meet an annual revenue cap; and
- businesses which have experienced a significant fall in revenue across a comparable time frame pre-COVID-19.

In a press release titled "[*Re-Align Framework to Renegotiate Contracts For Businesses Significantly Impacted by COVID-19*](#)" that was released on 2 November 2020, the Ministry of Law shared that they are in consultation with the industry on the details of these key criteria for businesses which will be covered under the Re-Align Framework. The details will be prescribed in subsidiary legislation to be issued under the Act.

Contracts covered under the Re-Align Framework

Under the new Part 10 of the Act, the Re-Align Framework will apply to a contract ("**Specified Contract**") that:

- is governed by Singapore law;
- was entered into before 25 March 2020;
- has at least one contracting party who has a place of business in Singapore; and
- is or is substantially of the following nature:
 - (i) a lease or licence for non-residential immovable property in Singapore for a term not exceeding five years;

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- (ii) a hire-purchase or conditional sale agreement for a commercial equipment and the agreement is not entered into with a bank licensed under the Banking Act or a finance company licensed under the Finance Companies Act. A commercial equipment refers to (1) any plant, machinery or fixed asset located in Singapore where such plant, machinery or fixed asset is used for manufacturing, production or other business purpose; or (2) a commercial vehicle;
- (iii) a lease of commercial equipment;
- (iv) a contract for the supply of goods; and
- (v) a contract for the supply of services.

The Re-Align Framework will not apply to a Specified Contract terminated before 2 November 2020, or where the notice for the termination of the Specified Contract was given in accordance with the contract before 2 November 2020, even if the period of the notice expires on or after that date.

Contracts excluded from the Re-Align Framework

Part 1 of the Second Schedule to the Act sets out a list of contracts that are excluded from the Re-Align Framework. Examples of such excluded contracts are consumer contracts, employment contracts, insurance contracts, contracts made in connection with a financial transaction or for the supply of financial services (except hire-purchase), construction and supply contracts, contracts affecting essential services and national interests, etc.

Seeking reliefs under the Re-Align Framework

An eligible business that wishes to negotiate for an adjustment to the rights and obligations of the parties and their assignees under the Specified Contract must serve a notice of negotiation in the prescribed form and manner on various persons associated with the Specified Contract (including any guarantor or surety):

- (a) within six weeks, or such longer period as the Minister may determine by order in the Gazette, after:
 - (i) the date of commencement of the new Part 10 of the Act; or
 - (ii) (where the eligible business seeks a negotiation pursuant to a change in the substance of the Specified Contract or pursuant to a change in the substance of the business (1) with a prescribed annual revenue cap; and (2) experienced a significant fall in prescribed revenue of the prescribed amount for the prescribed period), the date of commencement of the amendment effecting the change; and
- (b) within the service period for that notice.

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Once a notice of negotiation is served, parties will first be required to enter into renegotiations with the counterparty within the four-week negotiation period prescribed in the Act. If the parties are unable to renegotiate the contractual terms or revise the repayment schedule successfully, the Specified Contract may be terminated as prescribed under the Re-Align Framework.

Notwithstanding the terms of the Specified Contract, the rights and obligations of the parties may be adjusted in the manner prescribed in Part 4 of Schedule 2 to the Act. This is however subject to any further adjustment on a just and fair basis by an adjustment relief assessor appointed under the Act. No party or assignee may be represented by an advocate and solicitor at proceedings before an adjustment relief assessor, except with the permission of the adjustment relief assessor.

An example of the operation of the adjustment mechanism under the Re-Align Framework would be in respect of leases for non-residential immovable property. Upon the termination of a lease for non-residential immovable property, the Act prescribes, amongst others, that the tenant is not liable for any early termination fees or interests but is responsible for reinstating and delivering vacant possession of the premises to the landlord (failing which, the tenant is liable for any pre-agreed sums for such breaches).

In addition, Part 10 of the Act will set out procedures for the specified parties of the Specified Contract to claim compensation from a party in respect of the termination of the contract. For example, upon the early termination of a lease agreement for non-residential immovable property, an eligible small landlord in financial hardship may seek compensation from the tenant for the early termination. Some of the requirements which such a landlord must satisfy are:

- (a) the landlord must be (i) an individual; (ii) a sole proprietor; or (iii) a company incorporated solely to hold the interest in the immovable property that is the subject of the lease or licence in question, and owned only by one or more individuals and sole proprietors;
- (b) the landlord's annual income, determined in the prescribed manner, does not exceed the prescribed amount for the prescribed period;
- (c) the landlord's rental income derived from the lease or licence of the immovable property, determined in the prescribed manner, is 50% or more of the landlord's annual income.

Where such a landlord is not the sole lessor or licensor of the immovable property, the other lessors or licensors must also be persons mentioned in (a)(i), (a)(ii) and (a)(iii) above.

The Act further provides that certain obligations survive termination. These include obligations relating to confidentiality, exclusions and limitations of liability and non-competition.

Subsidiary legislation will be issued under the Act to set out further details on the statutory reliefs under the Re-Align Framework.

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BE Sector Reliefs

The Bill will introduce new Parts 8A, 8B and 8C in the Act to provide more support measures for stakeholders in the Built Environment Sector who have been significantly affected as a result of COVID-19.

Universal extension of time ("EOT")

Eligible construction contracts covered under Part 8A

The time relief provided under Part 8A of the Act (which is expected to come into effect in end November 2020¹) will apply to a construction contract that fits the following criteria ("**Part 8A Contract**"):

- it was entered into before 25 March 2020, but not if it was renewed on or after 25 March 2020 (unless it was renewed automatically);
- it remains in force on 2 November 2020; and
- where, as at 7 April 2020, any construction works to be performed under the construction contract have not been certified as completed in accordance with the contract.

Universal EOT up to 122 days

Save in certain exceptional circumstances (addressed below), Part 8A of the Act operates to automatically extend the completion date for any construction works performed under a Part 8A Contract by 122 days (from and including the completion date).

This universal period of 122 days (i.e. the period between 7 April 2020 and 6 August 2020) takes into consideration the work stoppages of two months due to the circuit breaker period, and further delays of at least two months for health authorities to clear COVID-19 in foreign worker dormitories.

However, the time relief will not be available if:

- the construction works were performed at any time between 20 April 2020 and 30 June 2020 (both dates inclusive);
- court, arbitral, or tribunal proceedings regarding a failure to comply with the completion date have been commenced before 2 November 2020; or
- any judgment, arbitral award or settlement has been awarded/entered into as a result of any such proceedings.

¹ Building and Construction Authority Circular dated 3 November 2020 titled "[The COVID-19 \(Temporary Measures\) \(Amendment No. 3\) Bill: \(A\) Part 8A \(Extension of Time for Construction Contracts\); and \(B\) Part 8B \(Temporary Measures for Cost-Sharing in Construction Contracts\)](#)" ("**BCA Circular**")

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The EOT applies universally to all Part 8A Contracts and a party to such contracts need not file a notification to seek the relief. The completion date that has been extended will be treated as the completion date provided by the Part 8A Contract. However where an employer has granted time relief to the affected contractor for any part of the period between 7 April 2020 and 6 August 2020 (both dates inclusive), then the "122-day" EOT will be reduced by the number of days for which time relief has already been granted during the said period.

EOT exceeding 122 days

A contractor who needs an extension of time exceeding 122 days will need to rely on the terms of the contract to do so. Alternatively, the contractor may serve a Notification of Relief on the developer under Section 6 of the Act to seek a relief from liquidated damages payable under the contract due to its inability to meet a completion date that occurs between 1 February 2020 and 31 March 2021.

Co-sharing of additional costs due to project delays

Construction contracts covered under Part 8B

The requirements for co-sharing of additional costs due to project delays under Part 8B of the Act (which is expected to come into effect in end November 2020²) will apply to a construction contract that fits the following criteria ("**Part 8B Contract**"):

- it was entered into before 25 March 2020, but not if it was renewed on or after 25 March 2020 (unless it was renewed automatically);
- it remains in force on 2 November 2020;
- the party for whom the construction works are performed under the contract is not an individual (except an individual acting as a sole proprietor of a sole proprietorship); and
- where, as at 7 April 2020, any construction works to be performed under the contract have not been certified as completed in accordance with the contract.

Scope of co-sharing costs

Part 8B of the Act makes it mandatory for contracting parties to a Part 8B Contract to co-share (subject to certain limitations described below) the additional costs incurred by the contractor between 7 April 2020 to 31 March 2021 which arise from delays in a project which is to a material extent caused by COVID-19 ("**qualifying costs**"). For example, a contractor or sub-contractor which had to rent machinery like tower cranes for a longer period due to the project delays caused by COVID-19 may claim part of the rental cost from the relevant party.

² BCA Circular

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Part 8B sets out a list of qualifying costs and further clarifies what types of costs are clearly excluded as qualifying costs. Some examples of qualifying costs include costs for site maintenance, insurance payment and storage of materials. On the other hand, costs that will be excluded will include manpower costs, costs incurred in implementing COVID-19 control measures, costs incurred to accelerate the performance of the construction works to meet a completion date, or costs for any items supported by other reliefs under the Act or other support schemes.

Cap on qualifying costs

Affected contractors are entitled to submit monthly payment claims to seek reimbursement of qualifying costs incurred in any month from 7 April 2020 until 31 March 2021. The co-sharing percentage between the parties is 50% of the qualifying costs, subject to a monthly cap 0.2% of the contract sum and an overall cap of 1.8% of the contract sum.

Process for claiming qualifying costs

Where the construction contract is one to which the Building and Construction Industry Security of Payment Act ("**SOPA**") applies, the party required to perform the construction works must claim for the qualifying costs by including the amount in a payment claim that the party serves on the party for whom the construction works are performed, in accordance with the SOPA. Part III of the SOPA applies to the qualifying costs as it applies to progress payments, subject to any prescribed modifications.

Any disputes in respect of the claim may be referred to an adjudicator appointed under the SOPA adjudication framework, who will determine whether the relief under Part 8B of the Act will apply, and if so, the amount to be co-shared between the parties.

Extension of date of delivery of possession

Agreements covered under Part 8C

Part 8C of the Act will allow for an extension of the date of delivery of possession of a property governed by an agreement that fits the following criteria ("**Part 8C Agreement**"):

- The agreement was entered into between (1) a housing developer and a purchaser for the sale and purchase ("**S&P**") of housing accommodation; (2) a commercial developer and a purchaser for the S&P of commercial property; (3) the Housing and Development Board and a purchaser for the S&P of housing accommodation or commercial property;
- For categories (1) and (2) above, the agreement was entered into before 25 March 2020 or pursuant to an option granted before 25 March 2020. For category (3) above, the option was granted before 25 March 2020;
- The agreement provides for a delivery date that is on or after 1 February 2020;

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- A permit to carry out structural works in any building works for the housing accommodation or commercial property was granted before 7 April 2020; and
- As at 7 April 2020, a temporary occupation permit in respect of the housing accommodation or commercial property has not been granted.

Relief for developers - extension of delivery date

Part 8C of the Act will allow a developer who is unable to meet the date of delivery of possession of the housing accommodation or commercial property to seek relief under the Act if they cannot come to an agreement with the purchasers on an alternative arrangement.

The delivery date provided in a Part 8C Agreement may be extended by up to 122 days after that delivery date unless court, arbitral, or tribunal proceedings regarding the failure to deliver possession of the housing accommodation or commercial property have been commenced before 2 November 2020. The developer may extend the delivery date one or more times except that the total period of all extensions must not exceed 122 days. However, this is subject to the relief to purchasers as set out below.

Process for claiming for extension of delivery date

To claim for the reliefs under Part 8C of the Act, the developer must notify the purchaser of the period of the extension in the prescribed form and manner and within the prescribed time.

If a developer wishes to extend the delivery date beyond 122 days, the developer will have to make an application (in the prescribed form and manner and within the prescribed time) to an assessor appointed under the Act. If the assessor determines that the developer's inability to deliver possession of the property by the delivery date in question is to a material extent caused by a COVID-19 event, then the assessor may make a determination and certify the new delivery date by which the developer may be reasonably expected to deliver possession of the housing accommodation or commercial property.

Part 8C of the Act provides for a moratorium on the taking of certain actions (e.g. making any deduction from any instalment or payment for any damages or liquidated damages) in relation to the developer's failure to deliver possession of the property to the purchaser under the Part 8C Agreement by the original delivery date or extended delivery date.

Right of purchasers to seek compensation

The purchaser of a Part 8C Agreement will be entitled to claim for reimbursement of the qualifying costs incurred by the purchaser due to the extension of the delivery date up to a cap of 70% of the original liquidated damages that would have been payable to the purchaser for the delay, based on the terms in the agreement for the purchase of the property (from and including the original delivery date up to and including the actual date of delivery of possession of the unit or the extended delivery date,

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whichever is earlier). Part 8C sets out a list of such qualifying costs, namely, costs incurred for procuring alternative housing accommodation or alternative commercial property (e.g. estate agent fees), any rent for such alternative premises during the period of delay, moving costs or related costs as may be prescribed. Any disputes on a purchaser's claim may be referred to an assessor appointed under the Act for determination.

The purchaser must submit his/her claim in the prescribed form and manner and within the prescribed period.

Fine-tuning Application of Property Tax Rebate

Through the previous Budgets and new legislation enacted, the Government had provided property tax rebates from 1 January 2020 to 31 December 2020 to landlords and mandated that landlords pass on these rebates to their tenants, which in many cases would have totalled up to about 1.2 month's rent for a shop premise.³ The landlords' obligations to pass on the benefit of the property tax rebates are set out in Part 6 of the Act and the COVID-19 (Temporary Measures) (Transfer of Benefit of Property Tax Remission) Regulations 2020 ("**PT Rebate Regulations**") which took effect on 13 May 2020.

On 31 July 2020, a rental relief framework was implemented under the Act to mandate rental waivers to qualifying tenancies, namely small and medium enterprise ("**SME**") tenants (including sub-tenants and licensee) and specified non-profit organisations ("**Rental Relief Framework**"). Landlords must waive two to four months of rent for qualifying entities under the Rental Relief Framework set out in Part 2A of the Act from April to July 2020 (the period will depend on the type of properties). The rental relief is co-shared by the Government through property tax rebate and cash grants given to landlords.

The Bill effects changes to Part 6 of the Act to address a mischief where the operations of the existing PT Rebate Regulations do not take into account the Rental Relief Framework. This may raise issues where there is a change of tenant during the year and the landlord is subject to the Rental Relief Framework. This is highlighted in an example shared by Second Minister for Finance, Mr Lawrence Wong at the Second Reading Speech on the Bill -- Tenant A, which is a qualifying SME under the Rental Relief Framework, occupies a shop premise in the course of 2020 until July 2020. The shop owner had to waive up to four months of rent for Tenant A from April to July 2020 under the Rental Relief Framework. By virtue of that, the owner should have satisfied his obligation to pass on the property tax rebate benefit of about 1.2 months of rent as well as some of the cash grant. However, if a new tenant, Tenant B, occupies the shop premise from August 2020 onwards, the owner is still required under the existing PT Rebate Regulations to pass on the property tax rebate benefit to Tenant B, pro-rated at about 0.5 month. This is not the intended outcome of the PT Rebate Regulations. The owner should not

³ For commercial properties (e.g. shop) which received a 100% property tax rebate, this would have equated to approximately 1.2 months' rent. For industrial and office properties which received a 30% property tax rebate, this would have equated to approximately 0.36 months' rent.

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need to pass on any benefit of the property tax rebate to Tenant B as the owner had already waived four months of rent for Tenant A and had passed on the benefit of the property tax rebate to Tenant A.

Therefore, the Bill introduces a provision in the Act to enable regulations to be made under the Act to ensure that the intended policy outcomes are effected and there is no undue burden on property owners.

Concluding Words

The Government typically does not interfere in contractual obligations. However, it is recognised that these are unprecedented times and exceptional circumstances which warrant a need for targeted and substantive intervention, to save eligible businesses which are critical to our country's economy and infrastructure. The Re-Align framework provides a fair and fast avenue for smaller businesses to move forward with revised terms in a contract that are adjusted to take into account the unprecedented changes brought about by COVID-19. The support measures for the BE Sector are much needed for a sector which has been brought to its knees due to the pandemic.

Further details of the reliefs discussed above will be set out in subsidiary legislation to be issued under the Act to implement the changes introduced in the Bill. Rajah & Tann Singapore will monitor and continue to keep you apprised of these changes through our Client Updates.

Visit our [COVID-19 Resource Centre](#) for views from our lawyers across the region on common issues and legal implications brought about by COVID-19. For specific inquiries, please reach out to your relationship partner or send an email to our [COVID-19 Legal Team](#).

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