
Corporate Real Estate

Temporary Relief Measures for Tenants and Landlords, Purchasers and Developers in the COVID-19 (Temporary Measures) Amendment Act 2020 (Updated 7 July 2020)

Introduction

On 5 June 2020, the COVID-19 (Temporary Measures) (Amendment) Bill 2020 was passed in Parliament. The COVID-19 (Temporary Measures) (Amendment) Act 2020 ("**Amendment Act**") was gazetted and came into force partially on 20 June 2020. The Amendment Act amends the COVID-19 (Temporary Measures) Act 2020 ("**principal Act**") to provide for, amongst other changes, relief measures relating to tenants and landlords, purchasers and developers, including a framework for rental relief. These changes have yet to come into force.

On 7 July 2020, the Ministry of Law released a [note on the rental relief framework](#) in the Amendment Act, providing further details on the entitlement to rental relief and the relevant relief mechanism. The Ministry of Law has also indicated in this note that the rental relief provisions in the Amendment Act will come into force by end-July 2020.

COVID-19 (Temporary Measures) (Amendment) Act

Through the previous Budgets and new legislation enacted, the government had provided property tax rebates to landlords and mandated that landlords pass on these rebates to their tenants, which in many cases would have totalled up to over one month's rent.¹ This was discussed in our earlier update on [Regulations for Property Owners on Passing on Tax Rebates to Tenants](#).

Contribution Note: This Client Update was written with contributions from Michelle Tham, Associate, from Corporate Real Estate.

¹ For commercial properties (e.g. shop) which received a 100 per cent property tax rebate, this would have equated to approximately 1.2 months' rent. For industrial and office properties which received a 30 per cent property tax rebate, this would have equated to approximately 0.36 months' rent.

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Since the previous Budgets, the economy has worsened considerably and uncertainties loom. As such, the Amendment Act is said to be premised on a "fair sharing of obligations" between Government, landlords and tenants, explained the Law Minister, Mr K. Shanmugam, with the aim of salvaging as many viable small and medium enterprise ("**SME**") businesses and jobs as possible. The Amendment Act also contains certain new provisions that seek to safeguard the interests of purchasers as well as developers, in new section 13(3)(d) and Part 8 (sections 36 – 39).

In this Update, we highlight the key measures in the Amendment Act relating to tenants and landlords, intending purchasers and developers.

A. Measures to Protect Tenants

There are three broad measures to protect tenants:

1. **Rental relief to SME tenants** – new section 19H of the principal Act covers rental relief; and new Section 19J of the principal Act covers additional rental relief (both as amended by section 15 of the Amendment Act);
2. **A Statutory Repayment Scheme** – this is covered in new section 19P of the principal Act (as amended by section 15 of the Amendment Act). This allows tenants to defer their rental payment by electing to pay the outstanding rent (for the period from 1 February 2020 to 19 October 2020 (this period may be extended or shortened by the Law Minister) in accordance with a statutory repayment schedule. Late interest and penalties will be capped at 3 per cent per annum;² and
3. **Rules on Holdover** – covered in new section 7B of the principal Act (as amended by section 7 of the Amendment Act).

1. Rental Relief to SME Tenants

The principal Act had originally granted those who are unable to fulfil their contractual obligations for scheduled contracts set out in the Schedule of the principal Act amidst the COVID-19 outbreak temporary relief for six months commencing from 20 April 2020 which would tentatively end on 19 October 2020.³ The principal Act had originally prohibited *inter alia* (a) the commencement or continuation of an action in court against the tenant, its guarantor or its surety; (b) the termination of a lease in a case of non-payment of rent; and (c) the exercise of a right of re-entry of forfeiture in such instances of non-payment.

² This was not prescribed in the Amendment Act but was announced by the Ministry of Law ("**Minlaw**") in <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes> and the exact operational details will be in subsidiary legislation.

³ Section 5 of the principal Act

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The Fortitude Budget, however, is a more substantive intervention in that it grants rental waivers for SME tenants.

Aside from the rental relief from the Government (as provided in new section 19H), the Amendment Act now requires landlords to grant **additional** rental relief (new section 19J) to SME tenants of non-residential properties who have *suffered significantly* – i.e. suffered a substantial drop in average monthly revenue due to COVID-19 whereby the average monthly revenue from April to May 2020 on an outlet level is reduced by 35 per cent or more, as compared to the same period in year 2019 (i.e. April to May 2019).⁴

Eligibility of SME Tenants for Rental Relief

There are four broad conditions:

- (a) The property must be a "prescribed property", which is defined in the Amendment Act as any prescribed non-residential property or any property belonging to a prescribed class of non-residential property and includes any part of such property.⁵
- (b) Qualifying SMEs tenants should not have more than S\$100 million in annual turnover in 2019 (at the group level⁶ and based on Corporate Tax and Individual Income Tax returns for the Year of Assessment 2019).⁷
- (c) To qualify for the **additional** rental relief to be provided by landlords, eligible SMEs must have suffered a 35 per cent or more drop in average monthly revenue from April to May 2020 on an outlet level, compared to April to May 2019.⁸
- (d) The lease agreements must have been in force (i) any time between 1 April 2020 to 31 July 2020 for qualifying commercial (e.g. shops) leases or licences; and (ii) any time between 1 April 2020 to 31 May 2020 for other non-residential (e.g. industrial/office) leases or licences.⁹
- (e) The lease agreements must have been (i) entered into before 25 March 2020; or (ii) entered into before 25 March 2020 but expired and renewed either automatically or in exercise of a right of renewal in the lease agreement.¹⁰

⁴ This was not prescribed in the Amendment Act but was announced by Minlaw in <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes> and the exact operational details will be in subsidiary legislation.

⁵ Section 19B (1) of the principle Act, as amended in section 15 of the Amendment Act

⁶ Please see Annex A of <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes>

⁷ Ibid

⁸ Ibid

⁹ Updated 7 July 2020. Please see <https://www.mlaw.gov.sg/covid19-relief/rental-relief-framework-for-smes> for further details.

¹⁰ Section 19C (1)(a) and (b) of the principle Act, as amended in section 15 of the Amendment Bill

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Application for Determination of Tenant's Entitlement to Rental Relief or Additional Rental Relief

Landlords can apply for an assessment of the eligibility of their tenants within a prescribed time¹¹ and the case will be examined by a rental relief assessor to determine the following:

- (a) whether the subject tenant satisfies the prescribed criteria to be a 'prescribed tenant-occupier' ("PTO") (this will be elaborated in greater detail below);
- (b) whether the subject tenant (being a PTO) satisfies the prescribed additional criteria for the additional rental relief; or
- (c) whether the applicant landlord satisfies the prescribed criteria for a reduction of the additional rental relief.¹²

Amount of Relief Granted

If able to satisfy the above conditions, qualifying tenants in the commercial sectors will get a total of four months of rent waived from April 2020 to July 2020. This will be borne equally by the Government and the landlord.

Qualifying tenants in the office and industrial sectors will get two months of rent waived from April 2020 – May 2020, likewise, borne equally between the Government and the landlord.

The table below sets out the rental relief framework in a nutshell:

	Period of Rental Relief	
	Qualifying Commercial Property	Qualifying Industrial / Office Properties
Rental Relief for eligible SMEs (borne by Government)		
Rental Relief	2 months (April and May 2020)	1 month (April 2020)
Additional Rental Relief for eligible SMEs who have suffered significantly (borne by landlords)		
Rental Relief	2 months (June and July 2020)	1 month (May 2020)
Total	4 months (April – July 2020)	2 months (April and May 2020)

If landlords have passed on property tax rebates and any direct monetary assistance to tenants since February 2020, this can be used to offset the required rental waivers.¹³

¹¹ This will be detailed in subsidiary legislation in due course

¹² Section 19M of the principal Act, as amended in section 15 of the Amendment Act

¹³ For more details, please see: <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes> (paragraph 6)

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Mechanics of Rental Relief

The beauty of the mechanics of such a mandatory rental waiver is such that the cash grant does not need to move from the Government (to the property owner) to flow down to the actual tenant or sub-tenant. This avoids the potential issue of sub-tenants not receiving any cash grant from the Government. By law and if all conditions have been met, new sections 19H(1)(a) and 19J(1)(a) stipulate that the prescribed amount of rent for the prescribed period and the additional prescribed period is simply not payable. The sub-tenant would not have to pay his immediate sub-landlord, who in turn will not have to pay the ultimate landlord.

As an illustration, a qualifying commercial tenant who meets all eligibility criteria including for the additional rental relief will not have to pay rent for to his landlord at all for the months from April 2020 to July 2020 (the rental for April – May will be covered by the Government's property tax rebate and the cash grant; and the rental for June and July will be borne by the landlord).

It is noteworthy that if a tenant has already paid to his landlord any rent (inclusive of interest or any other charge on such rent) for the prescribed period which he is eligible for the rental relief, the rent payable by such tenant for the remaining period of the lease agreement will be accordingly reduced by this amount he has paid up to the prescribed amount ("**deductible amount**").¹⁴

For the avoidance of doubt, if there is surplus remaining after the said reduction above, the tenant's landlord is bound to immediately refund to the tenant the deductible amount or balance, and this sum is recoverable from the tenant's landlord as a debt due to the tenant.¹⁵

New section 19D(1) of the principal Act allows the Government to disburse to property owners of prescribed properties through the Inland Revenue Authority of Singapore ("**IRAS**") a cash grant pertaining to a PTO. A PTO is defined in the Amendment Act as 'a tenant of any prescribed property who satisfies the prescribed criteria and who is an occupier of the property'.¹⁶ This will likely be elaborated in greater detail in the subsidiary legislation. A noteworthy amendment is that there is a new definition of "PTO Chain" for a PTO of a prescribed property – being 'a chain of landlords or tenants of that property ending with the PTO'.¹⁷ Previously, property tax rebates were mandated by law to be passed on from landlords to tenants. However, there was no requirement of the law for tenants to be bound to pass on such rebates to sub-tenants, although they were encouraged to do so. The Amendment Act, which legislates to cover all tenants in a PTO Chain, will cover this lacuna for purposes of the rent relief granted under the Act. With this amendment, the Government cash grant and additional rental relief from the landlord will now flow through the PTO Chain to be passed down to all sub-tenants.

¹⁴ Section 19H(2)(b) and 19J(2)(b) of the principal Act, as amended in section 15 of the Amendment Act

¹⁵ Section 19H(2)(d) and 19J(2)(d) of the principal Act, as amended in section 15 of the Amendment Act

¹⁶ Section 19B(1) of the principal Act, as amended in section 15 of the Amendment Act

¹⁷ Ibid

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This cash grant is equivalent to approximately 0.8 months of rent for qualifying commercial properties, and approximately 0.64 months of rent for industrial and office properties.¹⁸ This, taken together with the previous property tax rebate granted in the Resilience Budget, will account for approximately two months of rental relief borne by the Government for qualifying commercial properties, and approximately one month of rent for qualifying industrial and office properties.

There is no appeal from IRAS' decision on whether or not to disburse such a cash grant.¹⁹ Before IRAS disburses such a cash grant pertaining to a PTO of that property, IRAS will issue to the owner a notice of such a cash grant ("**Cash Grant Notice**").²⁰ IRAS is set to issue Cash Grant Notices from end-July 2020.²¹

It should be noted that there are stringent rules as to the service of the Cash Grant Notice which one receives.²²

- (a) Where an owner receives a Cash Grant Notice and is the PTO's landlord, the owner must serve such notice within a prescribed time on the PTO or such other persons as may be prescribed;
- (b) Where an owner receives a Cash Grant Notice and is not the PTO's landlord, the owner must serve such notice within a prescribed time on the owner's tenant in the PTO chain and such other person as may be prescribed;
- (c) Where a tenant receives a Cash Grant Notice and is the PTO's landlord, the tenant must serve such notice within a prescribed time on the PTO and such other person as may be prescribed; and
- (d) Where the tenant receives a Cash Grant Notice and is not the PTO's landlord, the tenant must serve such notice within a prescribed time on its own tenant that is part of the PTO chain and such other person as may be prescribed.

A person who contravenes the above without reasonable excuse shall be guilty of an offence and liable on conviction to a fine not exceeding S\$1,000.²³

When properties are not fully leased by SME tenants, the property owner and tenant should submit a joint application to IRAS and provide supporting documents and proof of SME tenants within its property. IRAS will then pro-rate the cash grant accordingly. The application process will commence in August

¹⁸ See <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes#fn3> (Annex B)

¹⁹ Section 19D(2) of the principal Act, as amended in section 15 of the Amendment Act

²⁰ Section 19F (1) of the principal Act, as amended in section 15 of the Amendment Act

²¹ Updated 7 July 2020. See <https://www.mlaw.gov.sg/covid19-relief/rental-relief-framework-for-smes>

²² Section 19F (3) and (4) of the principal Act, as amended in section 15 of the Amendment Act

²³ Section 19F (5) of the principal Act, as amended in section 15 of the Amendment Act

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2020 and the application form will be made available on IRAS website. More details on the application process will be released by end-July 2020.²⁴

SME property owners that run a trade or business on their own property will also be eligible for this cash grant, although no grants will be given for vacant property and land under development.²⁵

2. Deferred Payment – Statutory Repayment Schedule

SME tenants that qualify for the abovementioned landlord relief can also repay rental arrears accumulated from 1 February 2020 to 19 October 2020 (which the Law Minister may extend or shorten) under a prescribed statutory repayment schedule by serving a written notice on their landlords.²⁶ Once this notice has been served, these tenants must service the first instalment no later than 1 November 2020.²⁷

This repayment schedule works such that the tenants pay a specified portion of their arrears in equal instalments over an extended period of time (up to a maximum of nine months or the remaining term of tenancy, whichever is shorter), with interest on these arrears capped at 3 per cent per annum.²⁸ The Law Minister, Mr K. Shanmugam had explained that this rate is "comparable" to the median rate of secured bank loans in April 2020 and was derived considering landlords' cost of capital with property as security. Although some landlords' cost of capital could potentially be higher than 3 per cent, this rate was explained by Mr. K. Shanmugam to be intended to "strike a balance between the needs of landlords who have their own financial obligations and their tenants who do face significant challenges repaying their rental obligations under these fairly extraordinary circumstances".

- (a) For commercial properties, the maximum amount of arrears that can be serviced through these instalments will be five months of base rent ('base rent' excludes any gross turnover payable and maintenance fee and charges for the provision of services such as cleaning and security)²⁹.
- (b) For industrial and office properties, the maximum arrears that can be serviced through these instalments would be four months of base rent.³⁰

²⁴ For more details, see <https://www.iras.gov.sg/irashome/Schemes/Property/Government-cash-grant--announced-in-Fortitude-Budget/>

²⁵ For more details, see [Annex B-2 of the Fortitude Budget](#)

²⁶ Section 19P of the principal Act, as amended in section 15 of the Amendment Act

²⁷ This was not prescribed in the Amendment Act but was announced by Minlaw in <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes> and the exact operational details will be in subsidiary legislation.

²⁸ Section 19P(2) of the principal Act, as amended in section 15 of the Amendment Act. See also paragraph 8 of <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes>

²⁹ Please see footnote 2 in <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes>

³⁰ This was announced by Mr. K. Shanmugam in his speech on 5 June 2020. The Amendment Act does not cover this and further details are likely to be set out in subsidiary legislation.

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Safeguard for Landlords

However, this implies that landlords would bear the risk of default. As a safeguard, if (a) the tenant fails to make a repayment instalment within the prescribed time after it becomes due; or (b) the tenant terminates or repudiates the lease / licence ("**lease agreement**") during the repayment period; or (c) the landlord terminates the lease agreement for any default by the tenant other than a failure to pay a repayment instalment under the statutory repayment schedule within the prescribed time after it becomes due, the statutory repayment schedule will cease to have effect, and the landlord is entitled to:

- (a) immediate repayment of all arrears and all interest and other charges that would have accrued on the outstanding rental arrears under the lease agreement as of the date of default, less any interest paid on those arrears pursuant to the schedule; and
- (b) to exercise all rights under the contract for all arrears and interest and other charges.³¹

In other words, if the tenant defaults under this statutory repayment schedule, all outstanding arrears (including interest and other charges) will be accelerated and immediately payable in accordance with the terms of the original contract.

Landlords are also able to draw down from existing security deposits to offset the accumulated rental arrears during this repayment period but limited to the amount of security deposit less an amount representing one month of rent remaining.³²

To ensure transparency and accountability, tenants are obliged (on a written demand by the landlord) to provide specified documents and information to their landlords if the following conditions are met:

- (a) in the event where –
 - (i) the lease agreement is terminated or repudiated by the tenant during the repayment period;
or
 - (ii) the lease agreement is terminated by the landlord for any default by the tenant other than a failure to pay a repayment instalment under the statutory repayment schedule within the prescribed time after it becomes due; and
- (b) there are two or more repayment instalments outstanding which remain unpaid as at the time of termination or repudiation of the lease agreement.³³

³¹ Section 19Q of the principal Act, as amended in section 15 of the Amendment Act

³² Section 19S of the principal Act, as amended in section 15 of the Amendment Act

³³ Section 19Q(3) of the principal Act, as amended in section 15 of the Amendment Act

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A person who contravenes this without reasonable excuse, will be guilty of an offence and liable on conviction to a fine not exceeding S\$5,000.³⁴

3. Rules on Holdover

Due to the COVID-19 outbreak and the recent circuit-breaker restrictions, some tenants have faced difficulties vacating their premises at the end of their lease term and before the expiry of the prescribed period (i.e. before 19 October 2020 or as extended or shortened by the Law Minister) as a result of being unable to access the premises or to find movers.

To qualify, tenants must be able to show that the subject inability to vacate the property is caused by a COVID-19 event and that such conditions as may be prescribed are also satisfied.³⁵ Tenants who meet these conditions must then serve a notification of relief on the landlord and will not be liable to pay the landlord any sums in excess of such amount as may be prescribed, for its failure to vacate the property.³⁶

Landlords who have back-to-back arrangements with new tenants might suffer a "knock-on impact" and can serve a notification of relief on the new tenant in such circumstances. This would give the landlord and new tenant time to work out a mutually agreeable compromise. If this is not possible, parties can apply to an assessor for a determination of a just and equitable outcome.³⁷

B. Measures Taken to Protect Landlords

1. Grounds of Financial Hardship for Landlords

If landlords struggle to provide tenants with the mandatory additional rental waiver, they may apply for a rental relief assessor's determination on grounds of financial hardship.³⁸ This was crafted to protect smaller landlords who might only own one property and depend on rental for their livelihoods or retirement.

Factors considered during the assessment would include the annual value of the property, as well as whether the rental income forms a substantial proportion of the Landlord's total income.³⁹

If the appeal is granted, these landlords would only need to provide half of the stipulated rent waivers, i.e. one month to commercial tenants, and half a month to office and industrial tenants.⁴⁰

³⁴ Ibid; see section 19Q(4)

³⁵ This will be detailed in subsidiary legislation in due course

³⁶ Section 7B of the principal Act, as amended in section 7 of the Amendment Act

³⁷ Ibid

³⁸ See section 19M(2)(c) and 19N(1)(c). See also paragraph 8 of <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes>

³⁹ See paragraph 8 of <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes>

⁴⁰ Please refer to new section 19O(3) and paragraph 8 of <https://www.mlaw.gov.sg/news/press-releases/new-rental-relief-framework-for-smes>

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2. **Additional Support for Landlords**

These measures to protect landlords ride on the back of previous measures announced earlier by various authorities⁴¹ which introduced a slew of measures to support landlords who may face cash-flow problems as a result of providing relief to tenants as proposed under the Amendment Act. These measures aim to ease the landlord's cashflow needs and to aid their existing loan commitments.

Individual landlords who are current in their loan repayments as at 1 February 2020 could defer principal and interest repayments up to 31 December 2020. They can also opt to extend the loan tenure by up to the corresponding deferment period to ease monthly instalments when they resume regular repayments. Their credit scores will not be affected when they take up payment deferrals. This enhanced relief measure for individual landlords will be provided on an opt-in basis.⁴²

Large corporate landlords including Real estate investment trusts listed on the Singapore Exchange ("**S-REITs**"), are in turn encouraged to explore funding options with their financiers.

Banks have provided the assurance that there will be no automatic enforcement of loan covenant breaches with landlords as a result of the constraints and requirements imposed on the landlords by the Amendment Act.

In an announcement by Ministry of Finance ("**MOF**") and IRAS on 16 April 2020, S-REITs would have an extended period of up to 12 months from the end of their financial year ("**FY**") 2020 to distribute their taxable income derived in FY2020, to qualify for a tax transparency treatment (where the S-REIT is not taxed on its income that is distributed to its unitholders). MOF and IRAS will also further extend the timelines for S-REITs to distribute their taxable income derived in FY2020 and FY2021: (i) for taxable income derived in FY ending in 2020, S-REITs will have until 31 December 2021 to distribute them; and (ii) for taxable income derived in the FY ending in 2021, they will have until 31 December 2021 or three months after the end of FY2021, whichever is later, to distribute them. This extension gives S-REITs more flexibility to manage their cash flows amidst this challenging period.⁴³

C. Measures Which Could Protect Intending Purchasers

1. **New Section 13(3) – Assessors' Power to Make Further Determinations**

New section 13(3)(d)⁴⁴ gives the assessor the power to make a further determination to achieve an outcome that is 'just and equitable in the circumstances of the case'.

⁴¹ The Ministry of Finance (MOF), IRAS, Enterprise Singapore (ESG), and the Monetary Authority of Singapore (MAS)

⁴² For more details, please see: <https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Media-Releases-and-Speeches/Media-Releases/2020/Additional-Loan-and-Cashflow-Support-for-Landlords-and-Businesses-Affected-by-COVID-19/>

⁴³ More details will be provided in subsidiary legislations.

⁴⁴ New section 13(3)(d) of the principal Act, as amended by Section 10(f) of the Amendment Act, which came into operation on 20 June 2020

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- (a) This covers 'an option given by a housing developer to an intending purchaser for the purchase of a unit of housing accommodation' (this is a scheduled contract in paragraph 1(i) of the Schedule of the principal Act). This allows the release or discharge (in whole or in part) of any party to the contract from any obligation under the contract.
- (b) However, section 13(3)(d) does not appear to extend to "an agreement between a housing developer and a purchaser for the sale and purchase of a unit of housing accommodation" (a scheduled contract in paragraph 1(j) of the Schedule of the principal Act).

However, questions remain with regard to the scope and application of this new section 13(3)(d):

- (a) Is a purchaser able to apply for an assessor's determination to be released or discharged from his obligations to purchase the property only at the option to purchase stage? It appears from the wording of the Amendment Act that it could be read such that he might not be able to apply for such relief after the sale and purchase agreement has been entered into. However, the new Section 13(3)(d) might not be exhaustive in its wording and further clarity could be provided in subsidiary legislations.
- (b) If a purchaser (who had entered into a sale and purchase agreement) succeeds in applying for an assessor's determination to be released or discharged from his obligations to purchase the property, would this translate to him being totally absolved from all obligations to pay interest for late payments for progress instalments or otherwise? Does new section 7A (which covers relief from late payment interests or other charges) also apply to sale and purchase agreements between housing developers and purchasers?

Although the Amendment Act covers in broad strokes the spirit and intent of these measures, it is clear that we would have to await subsidiary legislation to iron out these kinks and operational details and to have more clarity as to its application.

2. New Section 13A – Subsequent Determinations

An amendment has been introduced (through new section 13A⁴⁵) to enable an assessor to make subsequent determinations after an initial determination has been made. This subsequent determination may (a) vary or replace the earlier determination if there has been a material change in the circumstances after it has been made and it is just and equitable for the variation or replacement to be made; (b) grant an extension of time for a party to make a payment under the earlier determination; or (c) require the parties to attend before the assessor after a specified time for a further review of the matter and to make a further determination.

⁴⁵ New section 13A of the principal Act came into operation on 20 June 2020

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D. Measures Which Could Protect Developers

1. *New Part 8 (Sections 36 – 39) of the Principal Act – Contracts Affected by Delay in the Performance or Breach of a Construction Contract, Supply Contract or Related Contract*

New section 37 of the principal Act allows a party to an affected contract to, within the prescribed time, apply in the prescribed form and manner to the Registrar to appoint an assessor to make a determination whether such a case is one to which Part 8 should apply to, and if so, whether it is just and equitable in the circumstances of the case:⁴⁶

- (a) for any prescribed obligation or prescribed right under the contract to be performed or exercised in a manner other than in accordance with the terms of the contract; and
- (b) for any prescribed term in the contract to be varied, released or discharged.

In making such a determination, the assessor (a) may take into account prescribed factors (which will be subsequently legislated); and (b) must seek to achieve an outcome that is just and equitable in the circumstances of the case.⁴⁷

It should be noted that this is potentially a lifeline to developers, for example, who face difficulties in being unable to rectify defects or deliver vacant possession of the units to purchasers within the contractual timelines as a result of COVID-19 events. In such an instance, they would be able to apply for an assessor's determination as set out above. Again, with regard to the complete scope and application, we would have to await the passing of the subsidiary legislation.

Conclusion

The Government typically does not interfere in contractual obligations. However, they recognise that these are unprecedented times and exceptional circumstances which warrant a need for targeted and substantive intervention, to save SMEs which are critical to our country's economy and infrastructure.

Given the mandated co-sharing of rental relief between the various stakeholders, landlords and tenants should carefully assess their legal obligations and the reliefs they are entitled to and consult with their advisers to better understand their rights and obligations.

The Amendment Act has also set out potential relief measures for intending purchasers and developers. However, the exact scope, manner of application and execution of these measures have not been fleshed out and full details will only be available after the passing of the subsidiary legislation.

⁴⁶ New section 37(1) of the principal Act, as amended in section 16 of the Amendment Act

⁴⁷ New section 38(2) of the principal Act, as amended in section 16 of the Amendment Act

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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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Corporate Real Estate

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