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COVID-19 (Temporary Measures) Act: Re-Align Framework Available from 15 January 2021 and Other Additional Reliefs for Built Environment Sector

Introduction

The COVID-19 (Temporary Measures) Act ("**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. The latest temporary reliefs that have been announced to help businesses which continue to be affected by the pandemic are as follows:

- (a) The Re-Align Framework, which facilitates the renegotiation of specified contracts for eligible businesses which are significantly affected by the COVID-19 pandemic, is set to be available from **15 January 2021 to 26 February 2021**.
- (b) Certain additional reliefs for the Built Environment sector have come into operation on **30 November 2020**. These include:
 - (i) A universal extension of time to the completion date for eligible construction contracts, as introduced in Part 8A of the Act ("**Part 8A**"); and
 - (ii) Co-sharing of qualifying costs arising from COVID-19 related project delays for eligible construction contracts, as introduced in Part 8B of the Act ("**Part 8B**").
- (c) The regulations relating to the property tax rebate have been amended to take into account the Rental Relief Framework via the COVID-19 (Temporary Measures) (Transfer of Benefit of Property Tax Remission) (Amendment) Regulations 2020 ("**PT Rebate Regulation Amendments**"), which was published on **18 December 2020**.

These reliefs are set out in the [COVID-19 \(Temporary Measures\) \(Amendment No. 3\) Act](#) ("**Amendment No. 3 Act**") which was passed in Parliament on 3 November 2020. For more information on the amendments in the Amendment No. 3 Act, please see our earlier Client Update on "Changes to COVID-19 (Temporary Measures) Act: Re-align Framework, Additional Reliefs for Built Environment Sector, Fine-tuning Property Tax Rebate Regulations", available [here](#).

This Update highlights the key features of the additional reliefs for the Built Environment sector which have come into force, as well as further information on the operation of the Re-Align Framework.

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Re-Align Framework

For contractual parties which encounter difficulty in performing their obligations under the contract as a result of COVID-19 events, the Re-Align Framework provides an avenue for an eligible party of a specified contract to renegotiate the terms of the contract with the counterparty.

Under the framework, parties will first have to enter into negotiations over the contract. If the parties are unable to come to a mutual agreement on the revised terms, they are entitled to other statutory reliefs such as termination of the contract on just and fair terms.

On 10 December 2020, the Ministry of Law ("**MinLaw**") announced in a press release on "Businesses May Seek Assistance under Re-Align Framework from 15 January 2021" (available [here](#)) that the Re-Align Framework will be available to eligible parties for six weeks from 15 January 2021, up to and including 26 February 2021. This means that businesses that wish to renegotiate their contracts must serve a Notice of Negotiation on the counterparty or other parties to the contract by 26 February 2021.

The operation of the Re-Align Framework, the eligible businesses and contracts, and the potential reliefs are further discussed below.

Eligible businesses

MinLaw has stated that the Re-Align Framework is intended to help small and micro businesses whose business outlook has been severely impacted by COVID-19, even after the resumption of economic and social activities.

As such, the criteria for businesses to be eligible for the Re-Align Framework are as follows:

- (a) Its annual revenue for the Financial Year 2019 does not exceed S\$30 million on a global group basis; and
- (b) It has experienced at least a 70% fall in monthly average gross income for July to December 2020, compared to July to December 2019.

Eligible contracts

The Re-Align Framework only applies to certain key business-to-business contracts. The contracts must fulfil the following criteria:

- (a) Governed by Singapore law;
- (b) Entered into before 25 March 2020;
- (c) Must not have been terminated (or have a notice for termination issued) before 2 November 2020;
- (d) Have at least one contracting party who has a place of business in Singapore; and

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- (e) Falls within the following categories of Scheduled Contracts which are likely to have substantial obligations that may need renegotiation:
 - (i) a lease or licence for non-residential immovable property in Singapore for a term not exceeding five years;
 - (ii) a hire-purchase or conditional sale agreement for commercial equipment (provided the agreement is not entered into with a bank licensed under the Banking Act or a finance company licensed under the Finance Companies Act);
 - (iii) a lease of commercial equipment;
 - (iv) a contract for the supply of goods; and
 - (v) a contract for the supply of services.

Excluded contracts

Certain contracts will be excluded from the Re-Align Framework, even if they fall within the list of Scheduled Contracts. They may be found in Part 2 of the Second Schedule of the Act and include the following, amongst others:

- (a) Consumer contracts;
- (b) Employment contracts;
- (c) Insurance contracts;
- (d) Construction and supply contracts;
- (e) Contracts for the carriage of goods for freight by sea, land or air, including any contract for freight forwarding and logistic services;
- (f) Contracts made in connection with a financial transaction or for the supply of financial services;
- (g) Commodity contracts;
- (h) Contracts for factoring of receivables; and
- (i) Contracts of national interest.

How to seek relief under the Re-Align Framework

The procedure for seeking relief under the Re-Align Framework, as well as the relevant time frames, is set out as follows:

- (a) **From 15 January 2021 to 26 February 2021:**
 - (i) Eligible businesses (the "**Affected Business**") that wish to invoke the Re-Align Framework must serve a Notice of Negotiation, using the designated forms, on the counterparty to the contract and other interested parties.
 - (ii) The Notice of Negotiation must be accompanied with relevant supporting documents proving the Affected Business's eligibility under the framework and will include financial statements.

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(b) Four-week negotiation period ("Negotiation Period"):

- (i) After the service of the Notice of Negotiation, parties are given a four-week period to renegotiate the terms of the contract.
- (ii) Further, once the Notice of Negotiation has been served, the counterparty will be prohibited from taking legal and enforcement actions against the Affected Business for failure to perform any contractual obligation.
- (iii) If the parties are able to reach an agreement, they may proceed with the amended contract, or terminate the contract on the agreed terms.

(c) Two-week objection period ("Objection Period"):

- (i) If parties are unable to reach a mutual agreement after the Negotiation Period, the counterparty can object to the Notice of Negotiation on limited grounds (i.e. that the contract in question is not one covered by the Re-Align Framework, the Affected Business is not eligible, or that the Notice of Negotiation was improperly served) by lodging a Notice of Objection with the Registrar within two weeks after the Negotiation Period ends. A copy of the Notice of Objection must be served on the Affected Business and other interested parties to the contract.
- (ii) An independent Assessor will make a determination on the Affected Business's eligibility as well as the parties' obligations upon termination. Pending the Assessor's determination, the contract will continue to run.
- (iii) If the counterparty does not lodge and serve a Notice of Objection within the Objection Period, the contract will be deemed terminated two days after the Objection Period ends.

(d) Two-week lodgement period:

- (i) If no Notice of Objection is lodged and a contract is terminated under the Re-Align Framework, a set of default just and fair terms in Part 4 of the Second Schedule of the Act will apply.
- (ii) If any of the parties object to the default terms of termination, and if the parties cannot reach an agreement amongst themselves, either party may lodge a Notice for Adjustment to request that an Assessor make a determination on the terms of termination in accordance with Part 4 of the Second Schedule of the Act or, where it is just and fair to do so, in any way different from the same. The Notice for Adjustment must be lodged within two weeks after the end of the Objection Period.

It should be noted that Assessors' determinations are binding and not appealable, and that legal representation is not permitted unless expressly allowed by the Assessor.

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Landlord hardship relief

The Re-Align Framework provides relief for eligible small landlords who might face hardship arising from the termination of the lease or licence agreement. Eligible landlords may receive compensation from the tenant in the event of early termination of the lease or licence agreement. The amount of compensation will be determined by an Assessor.

The landlord may seek such relief by lodging with the Registrar and serving on its tenants a Notice for Compensation within two weeks after the Negotiation Period ends.

To qualify as an eligible landlord, some of the requirements are as follows:

- (a) The landlord must be an individual, a sole proprietor, or 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 must not exceed S\$107,500; and
- (c) The landlord's rental income derived from the lease or licence of the immovable property must be 50% or more of the landlord's annual income.

Relief for hirers and renters of commercial equipment

The Re-Align Framework also provides for hirers and renters of commercial equipment or vehicles whose revenues have fallen by 70% or more. This applies to businesses which are eligible under the Re-Align Framework, and covers the following contracts:

- (a) A hire-purchase or conditional sale agreement for commercial equipment (provided the agreement is not entered into with a bank licensed under the Banking Act or a finance company licensed under the Finance Companies Act); or
- (b) A lease of commercial equipment.

Eligible businesses may take up a Repayment Scheme, which is an instalment plan that allows them to pay their accrued arrears within 18 months. To do so, businesses must serve a Notice of Revision, using the designated forms, on all parties to the contract and all interested parties within the same six-week period from 15 January 2021 to 26 February 2021.

Additional Reliefs for Built Environment Sector

The additional reliefs for the Built Environment sector introduced in Part 8A and Part 8B of the Act came into force on 30 November 2020.

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For more information on the operation of Part 8A and Part 8B, please see our earlier Client Update on "Changes to COVID-19 (Temporary Measures) Act: Re-align Framework, Additional Reliefs for Built Environment Sector, Fine-tuning Property Tax Rebate Regulations", available [here](#).

This section highlights and summarises the key features of the reliefs under Part 8A and Part 8B.

Part 8A

Eligible contracts

The time relief provided under Part 8A will apply to a construction contract that fits the following criteria ("**Part 8A Contract**"):

- (a) 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);
- (b) It remains in force on 2 November 2020; and
- (c) 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 extension of time

Save for prescribed exceptions, Part 8A 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).

However, the extension of time will not be available if:

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

Parties to Part 8A Contracts need not file a notification to seek the extension of time. The extended completion date will be treated as the completion date provided by the Part 8A Contract.

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Part 8B

Eligible contracts

The requirements for co-sharing of additional costs due to project delays under Part 8B will apply to a construction contract that fits the following criteria ("**Part 8B Contract**"):

- (a) 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);
- (b) It remains in force on 2 November 2020;
- (c) 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
- (d) 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.

Co-sharing of costs

Part 8B directs contracting parties to a Part 8B Contract to co-share the additional costs incurred by the contractor between 7 April 2020 to 31 March 2021 which arise from delays in a project which are to a material extent caused by COVID-19 ("**qualifying costs**"). Part 8B sets out a list of qualifying costs and further clarifies what types of costs are excluded as qualifying costs.

Affected contractors are entitled to submit their claim for qualifying costs incurred in the period from 7 April 2020 until 31 March 2021 through progress payment claims. 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.

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.

Fine-tuning Application of Property Tax Rebate

The Government had earlier implemented property tax rebates from 1 January 2020 to 31 December 2020 to landlords and mandated that landlords pass on these rebates to their tenants. 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 ("**Rental Relief Framework**"). Landlords must waive two to four months of rent for

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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 rebates and cash grants given to landlords.

However, the introduction of the Rental Relief Framework caused a potential dissonance with the existing PT Rebate Regulations, which did not take into account the Rental Relief Framework. This raised potential issues in situations where there was a change of tenant during the year and the landlord was subject to the Rental Relief Framework. The Amendment No. 3 Act thus introduced changes to Part 6 of the Act to enable regulations to be made so as to ensure that the intended policy outcomes are effected and there is no undue burden on property owners.

In accordance with this, the PT Rebate Regulation Amendments were published on 18 December 2020, amending the PT Rebate Regulations so as to take into account any benefit that has been passed by the landlord to the tenant under the Rental Relief Framework, thereby harmonising the relief framework.

Concluding Words

The Government has been proactive in responding to the difficulties faced by businesses across the various industries. The relief measures introduced pursuant to the Act have been wide-reaching and have been continuously updated to keep pace with the changing impact of the pandemic and the corresponding requirements.

Eligible businesses wishing to utilise the Re-Align Framework should take note of the relevant timelines so as to avoid missing the prescribed windows in which relief may be sought.

- (a) Importantly, parties intending to seek renegotiation should ensure that the **Notice of Negotiation** is served between **15 January 2021** and **26 February 2021** (both dates inclusive).
- (b) Parties raising an objection to a Notice of Negotiation under the avenues elucidated above and landlords seeking compensation for hardship relief must lodge and serve the **Notice of Objection** or **Notice of Compensation** respectively within **two weeks after the end of the Negotiation Period**.
- (c) Parties seeking to object to the default terms of termination under the Re-Align Framework must lodge the **Notice for Adjustment** within **two weeks after the end of the Objection Period**.

Parties seeking to utilise the additional reliefs for the Built Environment sector should also take note of the following processes:

- (a) For Part 8A extensions of time, the extension applies automatically, and parties to Part 8A Contracts need not file a notification.
- (b) For Part 8B co-sharing of costs, parties seeking relief must include their claim for the qualifying costs by including the amount in any payment claim that the party serves on the party for whom the construction works are performed. Therefore, for each period between **7 April 2020 to 31**

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March 2021, parties must determine the qualifying costs incurred and include such costs in the corresponding payment claim.

- (c) Contractors who wish to seek reliefs that are not covered under Part 8A & Part 8B should explore whether such reliefs are available under their existing contractual arrangement and Part 2 of the COVID-19 Act.

Although certain measures in the Amendment No. 3 Act have yet to come into operation, Rajah & Tann Singapore will monitor and continue to keep you apprised of these developments 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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