

Rental Waiver Framework for SMEs and Specified Non-Profit Organisations Affected During Phase 2 (Heightened Alert)

Executive Summary

On 14 September 2021, the COVID-19 (Temporary Measures) (Amendment No. 4) Bill ("**Bill**") that seeks to amend the COVID-19 (Temporary Measures) Act 2020 ("**Act**") was passed in Parliament. The Act provides for, among other things, targeted and temporary reliefs for individuals and businesses that are unable to perform certain contracts due to the uncertainties brought about by COVID-19.

Among other changes, the Bill amends the Act to provide a Rental Waiver Framework ("**RWF**") to support Small and Medium Enterprises ("**SMEs**") and specified non-profit organisations ("**NPOs**") affected by the tightened safe management measures during Phase 2 (Heightened Alert) ("**P2(HA)**"). Eligible tenants¹ of commercial properties may apply for waiver of rent and licence fees under their leases and licences in specified situations, for the period starting on 5 August 2021 and ending on 18 August 2021 ("**relevant period**").²

Under the RWF, landlords will be required to provide a rental waiver of two weeks of gross rent³ to eligible SME and specified NPO tenant-occupiers of qualifying commercial properties. The RWF complements earlier support measures, one of which was the Rental Support Scheme ("**RSS**") that provides one month of rental support in total as cash for qualifying tenants in privately owned commercial properties. Together with the RSS cash payouts, these tenants will benefit from a total of about 1.5 months of rental support.

The RWF is expected to start in October 2021.

In this Update, we outline the main aspects of the RWF which are pertinent to tenants, intermediary landlords (landlords who are not the property owners and sublet the property) and property owners.

¹ "tenant" includes a lessee, sub-lessee, licensee or sub-licensee of a property, but excludes a person or class of persons prescribed as not being a tenant.

² An earlier amendment to the Act provided for a Rental Relief Framework which covered periods from April to May 2020 or April to July 2020. The Ministry of Law announced on its website that acceptance of applications for the Rental Relief Framework has concluded. The Rental Relief Framework was covered in our August 2020 Client Update, available [here](#).

³ Gross rent is what is agreed on under the lease agreement or licence, and will include gross turnover rent, maintenance fees and service charges.

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Eligibility Criteria for Rental Waiver

Qualifying Entities	<ul style="list-style-type: none"> SME tenant-occupier or Specified NPO tenant-occupier <p>SME refers to any of the following (including when acting as trustee of a trust):</p> <ul style="list-style-type: none"> corporation registered under section 19 or 368 of the Companies Act; sole proprietorship; partnership; limited partnership; limited liability partnership; co-operative society.⁴ <p>NPO refers to any of the following types of entities:</p> <ul style="list-style-type: none"> registered or exempt charities (under the Charities Act); any of the following that is not a registered or exempt charity: members of the National Council of Social Services (NCSS); national sports associations; national disability sports associations, specified arts and culture societies; specified trade associations.⁵
Qualifying Commercial Properties	<ul style="list-style-type: none"> Include shops and restaurants. For a full list of qualifying commercial properties, refer here.
Fulfilment of all criteria	<p>To qualify for rental waiver, an SME or specified NPO tenant-occupier of a qualifying commercial property must fulfil all of the following criteria:</p> <ol style="list-style-type: none"> Have an annual revenue not exceeding S\$100 million in FY 2019 Lease or licence must be: <ol style="list-style-type: none"> Entered into or renewed before 20 July 2021; In force for the entire relevant period (i.e. 5 to 18 August 2021); Stamped on or before 2 August 2021;⁶ Suffered at least a 20% drop in average monthly revenue during both P2(HA) periods (16 May 2021 to 13 June 2021 and 22 July 2021 to 18 August 2021, all dates inclusive), as compared to the Phase 3 period (28 December 2020 to 7 May 2021, both dates inclusive).⁷ For SMEs that are part of a Singapore group of entities ("Group"),⁸ the Group's annual revenue does not exceed S\$100 million in FY 2019.

⁴ MinLaw RWF 2021 Additional Resources (Definitions), available [here](#).

⁵ *Ibid.*

⁶ Tenants whose leases are not stamped but require assistance under the RWF and meet all other eligibility criteria may manually apply for an assessment by the rental waiver assessor. Successful applicants will be issued with a Notice and will be subject to the same service requirements as other groups of tenants.

⁷ In cases where tenants only started operating after 28 December 2020, the drop in average monthly revenue will be calculated by comparing both P2(HA) periods to the period from the business commencement date to 15 May 2021 (both dates inclusive).

⁸ A Singapore group of entities means a group of entities that are incorporated or established in Singapore and which are related through ownership or control in such a way that the group is either required to prepare consolidated financial statements

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How to Claim Rental Waiver

Notice of Rental Waiver ("Notice")

From October 2021, tenants who have qualified for the second payout of the RSS will receive a Notice from the Ministry of Law ("**MinLaw**"). Until they receive the Notice, tenants should continue to fulfil their existing contractual obligations, as they may otherwise be subject to enforcement action.

As receipt of the Notice does not automatically qualify the recipient tenant for the rental waiver, tenants who receive the Notice and wish to claim the rental waiver must self-assess if they meet the eligibility criteria set out above.

We outline below key actions/obligations for/on tenants, intermediary landlords and property owners under the RWF.

<p>What Should Tenants Do to Claim Rental Waiver?</p>	<ul style="list-style-type: none"> • Conduct self-assessment for eligibility and prepare supporting documents <p>Tenants who assess themselves to be eligible for the rental waiver are encouraged to start preparing the necessary supporting documents even before they receive the Notice, so that they may claim the rental waiver in a timely manner.</p> <p>The supporting documents required are copies of profit and loss statements for all the following periods: (a) 16 May to 13 June 2021; (b) 22 July to 18 August 2021; and (c) 28 December 2020 to 7 May 2021. If the tenant-occupier is part of a Group, the SME tenant-occupier must also provide the Singapore group of entities' audited financial statements for FY2019.</p> <p>If the tenant is unable to provide any profit and loss statements, the tenant must make a Statutory Declaration attesting that it meets the eligibility criteria to qualify for the rental waiver.</p> <p>Tenants are advised to carefully assess their eligibility before proceeding with the claim. This is because tenants which are subsequently assessed to be ineligible under the assessment mechanism will be liable for the late payment and interest charge associated with the two weeks of rental waiver.</p>
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for financial reporting purposes under FRS 110 or an equivalent standard or would have been so required if equity interests in any of the entities were traded on any stock exchange in Singapore.

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	<ul style="list-style-type: none"> <p>• Serve Notice and requisite supporting documents on landlord within prescribed timelines</p> <p>After receipt of Notice, tenants who meet all eligibility criteria must:</p> <ol style="list-style-type: none"> 1. Complete the Declaration Form accompanying the Notice: 2. Within 28 calendar days from the date of the Notice, send the following documents through email or registered post to their immediate landlord: <ol style="list-style-type: none"> (a) a copy of the Notice; (b) a copy of the completed Declaration Form; and (c) copies of the requisite supporting documents. <p>To minimise/deal with potential issues concerning compliance, tenants should note:</p> <ul style="list-style-type: none"> - Email is the preferred method of service to minimise potential disputes on compliance with service requirements. - To retain the original Notice, completed Declaration Form and supporting documents, and proof of sending the copies of the documents to their landlord for a period of six months These documents may be required to be produced in the event of a dispute. <p>• Rental waiver will automatically apply by operation of law once an eligible tenant serves all requisite documents to their landlord, as follows:</p> <ol style="list-style-type: none"> (a) For tenants that have any rental arrears for the relevant period (i.e. 5 to 18 August 2021), these arrears will be deemed as paid, and the tenants will not be liable for any interest or charge associated to that amount. (b) For tenants that have already paid their landlords rent for the relevant period, their rent for the next most immediate month will be reduced by two weeks. <p>In situations where the lease has ended or is ending (i.e. (a) and (b) are not applicable), the landlord must immediately refund the tenant two weeks of rent, as a debt due to the tenant.</p> <p>Landlords who have provided rental support to their tenants during P2(HA) may offset from their rental waiver obligations any direct monetary assistance or rental waivers provided to tenants from 16 May 2021 up to the date the landlord receives all the tenant's supporting documents.</p>
<p>Obligations of Intermediary Landlords</p>	<ul style="list-style-type: none"> <p>• Intermediary landlords who receive the Notice and supporting documents from eligible tenants are required to provide the rental waiver as set out in the Notice.</p>

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	<ul style="list-style-type: none"> • In order to receive the same amount of rental waiver from their immediate landlord, up to a cap of two weeks of their own gross rent, intermediary landlords must within seven calendar days of receiving the documents from their tenant, send copies of the documents received from the tenant to their own immediate landlord through email or registered post. • To minimise/deal with potential issues concerning compliance, intermediary landlords should note: <ul style="list-style-type: none"> - Email is the preferred method of service to minimise potential disputes on compliance with service requirements. - To retain the documents received from their tenant, and proof of sending the copies of those documents to their own landlord for a period of six months. These documents may be required to be produced in the event of a dispute.
Obligations of Property Owners	<ul style="list-style-type: none"> • Property owners receiving the Notice and the other documents from eligible tenants are required to provide the rental waiver to their tenants as set out in the Notice.

Assessment by Rental Waiver Assessors

To deal with potential issues/disagreements, the RWF provides a mechanism for application for assessment by rental waiver assessors. For instance, where a landlord and tenant-occupier cannot reach an agreement, they may apply to an independent rental waiver assessor for a determination. Applicants must inform the property owner and all other intermediary landlords/tenants of the subject property, where applicable. The rental waiver assessor's determination will be binding on all landlords and the tenant-occupier, and will not be appealable.

We outline certain matters which tenants, intermediary landlords and property owners may apply for assessment by a rental waiver assessor.

For Tenants	<p>Within 14 calendar days after complete service of the copy of the Notice and supporting documents to their landlord, tenants may apply for a rental waiver assessor to determine any of the following matters:</p> <ul style="list-style-type: none"> • The actual amount of rent under the lease agreement. • The actual amount of any component of the formula used to compute the prescribed amount of rent that is to be waived. The formulas will be prescribed in subsidiary legislation.
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	<ul style="list-style-type: none"> For rental waiver in cases where the tenant's lease agreements were not stamped on or before 2 August 2021, but tenant meets all other eligibility criteria.⁹
<p>For Intermediary Landlords and/or Property Owners</p>	<p>Within 14 calendar days after receiving the copies of the Notice and supporting documents from their tenant, property owners and/or any intermediary landlords may apply for a rental waiver assessor to determine any of the following matters:</p> <ul style="list-style-type: none"> Whether the tenant-occupier is eligible for the rental waiver. Whether their tenant-occupier or intermediary landlord complied with service requirements and if not, whether this non-compliance was material. The actual amount of rent under the lease agreement. The actual amount of any component of the formula used to compute the prescribed amount of rent that is to be waived. The formulas will be prescribed in subsidiary legislation. For exemption from providing rental waiver on grounds of "financial hardship". To qualify for such exemption, the following conditions apply: <ol style="list-style-type: none"> The applicant should be the property owner who is: (i) an individual or sole proprietor landlord; or (ii) a company solely created to hold interest in the property ("holding company"), and the holding company is owned by one or more individuals and/or sole proprietors who each meet the other two criteria (b) and (c) below. The Annual Value of investment properties owned by the applicant, or each shareholder of the holding company (whether directly, or indirectly through companies) is less than S\$60,000; and The average monthly rental income derived from all properties owned by the applicant, or each shareholder of the holding company (whether directly, or indirectly through companies) constitutes 75% or more of his/her average monthly gross income. Whether it is just and equitable in the circumstances of the case for the rental waiver to be reversed or reduced, for instance where landlords had provided significant rental waivers or reductions prior to 16 May 2021.

Implementation

The RWF is expected to be implemented in October 2021.

⁹ Successful applicants will be issued with a Notice, and will be subject to the same service requirements as other groups of tenants. More details on such applications will be provided in due course.

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Further Information

If you wish to find out more about this development, please feel free to reach out to our team below who will be happy to assist.

For more information, click on the following links:

- [Overview of Rental Waiver Framework 2021](#)
- [FAQs on Rental Waiver Framework 2021](#)
- MinLaw press release titled "[Rental Waiver Framework for Businesses Impacted by Phase 2 \(Heightened Alert\)](#)".
- [COVID-19 \(Temporary Measures\) \(Amendment No. 4\) Bill](#)

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