

E-briefing

August 2020 must-knows for commercial landlords

Keeping abreast with recent amendments to the COVID-19 (Temporary Measures) Act and its (Rental and Related Measures) Regulations 2020

Introduction

1. This is an update to our earlier article of 10 April 2020 summarising the COVID-19 (Temporary Measures) Act¹ (“**Act**”) for commercial landlords².
2. The Act was passed on 7 April 2020. On 5 June 2020, Parliament passed various amendments to the Act, with many of the key amendments coming into force on 31 July 2020³. On 30 July 2020, the Minister amended the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020⁴ (“**TRC Regulations**”)⁵, and concurrently issued the fresh COVID-19 (Temporary Measures) (Rental and Related Measures) Regulations 2020⁶ (“**RRM Regulations**”).
3. With the above changes, this article seeks to update on the following **2 categories of amendments to the law** relevant to commercial landlords:
 - 3.1. **Rental relief framework** for Small and Medium Enterprises (“**SMEs**”) and Non-Profit Organisations (“**NPOs**”), including Rental Relief, Additional Rental Relief, automatic interim moratorium on recovery of rent pending issuance of notice of cash grant, application for Assessor’s Determination, statutory repayment schedule, and restriction on landlord’s draw down of security deposit; and
 - 3.2. **Other general amendments** relating to lease or licence of non-residential immovable property (e.g. expanded list of prohibited actions, inapplicability of the limit to late payment interest or other charge, and relief from holding over).

Rental relief framework for SMEs and NPOs

4. The amendments introduced Part 2A of the Act, which seeks to mitigate the impact of COVID-19 events on eligible lessees or licensees of non-residential properties (hereinafter “**tenant**”), by providing relief from payment of rent and licence fees in specified situations, via a mandated equitable co-sharing of such obligations between the Government and the lessors or licensors (hereinafter “**landlord**”).⁷

¹ The Act is available at: <https://sso.agc.gov.sg/Act/COVID19TMA2020>

² <https://www.harryelias.com/content/e-briefing-summarising-covid-19-temporary-measures-act-2020-commercial-landlords>

³ COVID-19 (Temporary Measures) (Amendment) Act 2020 (Commencement) (No. 2) Notification 2020 made on 30 July 2020.

⁴ The TRC Regulations is available at: <https://sso.agc.gov.sg/SL/COVID19TMA2020-S303-2020?DocDate=20200730>

⁵ COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) (Amendment No. 2) Regulations 2020 made on 30 July 2020.

⁶ The RRM Regulations is available at: <https://sso.agc.gov.sg/SL/COVID19TMA2020-S664-2020?DocDate=20200730>

⁷ The purpose of Part 2A of the Act is set out in Section 19A, and also in the introduction of the rental relief framework on the Ministry of Law’s website: <https://www.mlaw.gov.sg/covid19-relief/rental-relief-framework-for-smes>

5. **There are 2 types of relief: (1) Rental Relief⁸, and (2) Additional Rental Relief⁹.** The difference between them is the rental waiver amount to be extended to the tenant, which is calculated based on the applicable formulae: refer to paragraph 8 below.

5.1. According to the Ministry of Law¹⁰, the total rental relief should be as follows (but the *actual* rental waiver amount depends on the applicable formulae):

Type of relief	Relief Period	
	Type A property (generally commercial properties)	Type B property (generally industrial or office properties)
(1) Rental Relief (supported by Government assistance)		
Relief	2 months (April – May 2020)	1 month (April 2020)
(2) Additional Rental Relief (borne solely by landlords)		
Relief	2 months (June – July 2020)	1 month (May 2020)
Total:	4 months (April – July 2020)	2 months (April – May 2020)

5.2. Landlords will receive the Government assistance via: (1) the *existing* property tax rebate under Section 29(2) of the Act and the COVID-19 (Temporary Measures) (Transfer of Benefit of Property Tax Remission) Regulations 2020¹¹ (“**PTR Regulations**”), and (2) the ‘*new*’ Government cash grant, disbursed via the Inland Revenue Authority of Singapore (“**IRAS**”).¹²

5.3. IRAS aims to issue the majority of the **notices of cash grant by mid-August 2020**, which will be sent via hardcopy and available for viewing online on IRAS’ myTaxPortal.¹³ However, landlords or eligible tenants **who have not received the notice of cash grant by 21 August 2020 should make an application on IRAS’ website¹⁴ by 21 October 2020.**¹⁵

6. To be **eligible for Rental Relief**, all the following criteria¹⁶ must be fulfilled:

6.1. A lease or licence of a prescribed property which was in force for the relevant period from 1 April 2020 to the end of the prescribed period (which is until 19 October 2020 *for now*)¹⁷ (hereinafter “**lease agreement**”);

⁸ Governed by Section 19H of the Act, and Regulations 10 and 11 of the RMM Regulations.

⁹ Governed by Section 19J of the Act, and Regulations 12 to 14 of the RMM Regulations.

¹⁰ See paragraph 6 of <https://www.mlaw.gov.sg/news/press-releases/2020-07-30-commencement-of-rental-relief-framework>

¹¹ The PTR Regulations are available at <https://sso.agc.gov.sg/SL/COVID19TMA2020-S375-2020?DocDate=20200512>; also refer to the guidance in the IRAS e-Tax Guide for Property Tax Rebate for Non-Residential Properties in 2020 (Fourth Edition) at: <https://www.iras.gov.sg/irashome/Property/Property-owners/Working-out-your-taxes/Property-Tax-Reliefs/>

¹² Generally, 1.2 month in property tax rebate plus 0.8 month in cash grant for Type A property (total of 2 months), or 0.36 month in property tax rebate plus 0.64 month in cash grant for Type B property (total of 1 month): see paragraph 9.17 of IRAS e-Tax Guide in footnote 11 above, and “*How is the amount of Government cash grant calculated?*” in

<https://www.iras.gov.sg/irashome/Schemes/Property/Government-cash-grant-announced-in-Fortitude-Budget/>

¹³ See paragraph 4 and footnote 12 of <https://www.mlaw.gov.sg/covid19-relief/rental-relief-framework-for-smes>.

¹⁴ For example, because the prescribed property is only partially let out, or let out to both SME and non-SME under a single property tax account. Visit <https://go.gov.sg/governmentcashgrant>

¹⁵ See paragraph 10 of <https://www.mlaw.gov.sg/covid19-relief/rental-relief-framework-for-smes#effected>

¹⁶ Section 19C of the Act. See also the summary in Annex A of the Ministry of Law’s website press release of 30 July 2020: <https://www.mlaw.gov.sg/files/news/press-releases/2020/8/AnnexA.pdf>

¹⁷ See definition of “relevant period” in Section 2 of the Act, and the “prescribed period” under Section 3(1) of the Act is 6 months from 20 April 2020 (i.e. until 19 October 2020), pursuant to COVID-19 (Temporary Measures) (Prescribed Period) Order 2020 made on 20 April 2020, available at: <https://sso.agc.gov.sg/SL/COVID19TMA2020-S302-2020?DocDate=20200420>

- 6.2. The lease agreement must be entered into or renewed before 25 March 2020, or if renewed on or after 25 March 2020, then such renewal must be either automatically or in exercise of a right of renewal in the lease agreement¹⁸;
- 6.3. A prescribed property¹⁹ is non-residential and falls within either of the following:
- 6.3.1. **Type A property** (generally **commercial properties**), e.g. hotels, serviced apartments, hostels, guest house, boarding house, MICE²⁰ premises, international transport premises, restaurants, retail shops, sports and recreation premises, amusement centre, cinema, theatre, medical premises, child care centre, kindergarten, school, driving school, tourist attractions²¹; or
- 6.3.2. **Type B property** (generally **industrial or office properties**), e.g. *not* a Type A property and not for residential purpose nor for exclusive use of residents of residential premises²²; and
- 6.4. The tenant must be a “prescribed tenant-occupier”²³ (hereinafter “**PTO**”), that is, one who (1) occupies the prescribed property under a written lease agreement for the sole purpose of carrying on a business²⁴, and (2) whose annual revenue is not more than S\$100 million²⁵ (i.e. SMEs). Specified NPOs may also be PTOs, namely, a registered charity or an exempt charity, or either of the following: (i) a member of the National Council of Social Service; (ii) a national sports association; (iii) a national disability sports association; (iv) an arts and culture society; or (v) a trade association.²⁶
7. To be **eligible for Additional Rental Relief**, the tenant **must satisfy the prescribed additional criteria**²⁷ as follows: (1) the tenant carried on its business at the prescribed property before 25 March 2020, and (2) there is a 35% decrease in average monthly gross income²⁸. Where the tenant is an entity whose majority shareholding is held by a Singaporean entity and the tenant is a member of a Singapore group of entities, there is an *additional* criterion that (3) the aggregate annual revenue of those members of the Singapore group of entities is not more than S\$100 million²⁹. The above also broadly applies to NPOs³⁰ with some tweaks³¹.

¹⁸ Section 19(c)(1) of the Act, which is substantively the same temporal scope as Section 4(1)(a) of the Act for eligible lease agreements which qualify for temporary relief under Part 2 of the Act (i.e. the Notification for Relief mechanism).

¹⁹ See definition of “prescribed property” in Section 2 of the Act.

²⁰ MICE: Business meetings, incentive travel, conventions and exhibitions.

²¹ As defined in in Part 2 of the First Schedule of the RMM Regulations.

²² As defined in in Part 3 of the First Schedule of the RMM Regulations.

²³ Definition of “PTO” in Section 2 of the Act, read with Regulation 4 of the RMM Regulations.

²⁴ Regulation 2 of the RMM Regulations: “business” includes a profession or trade or an occupation or undertaking, whether or not conducted on a regular, repetitive or continuous basis and whether or not engaged in or carried on for a fee or profit;

²⁵ Refer to Regulation 4(c) of the RMM Regulations for the precise scenarios or methods to compute the annual revenue.

²⁶ See the definition of “specified person” Regulation 2 of the RMM Regulations. Also, “specified person” falls within the definition of “entity” in said Regulation 2, and in turn, “entity” is an eligible tenant under the Rental Relief criteria in Regulation 4.

²⁷ Regulation 14 of the RMM Regulations. See also the summary in Annex A of the Ministry of Law’s website press release of 30 July 2020: <https://www.mlaw.gov.sg/files/news/press-releases/2020/8/AnnexA.pdf>

²⁸ Refer to Regulations 14(2)(a)&(b), (3)(a)&(b) and (4)(a)&(b) of the RMM Regulations for the precise scenarios or methods for computing the decrease in average monthly gross income.

²⁹ See Regulation 14(3)(c) of the RMM Regulations for precise scenarios or methods for computing aggregate annual revenue.

³⁰ For the list of eligible NPOs, refer to the main text of footnote 26 above.

³¹ See the prescribed additional criteria specifically for such NPOs in Regulation 14(4) of the RMM Regulations.

8. Upon the landlord receiving a notice of cash grant from IRAS, **the prescribed rent amount and its corresponding interest or other charge** for the duration of a specified period, which are otherwise payable under the lease agreement, **shall be legally treated as waived**, i.e. the tenant need not pay these amounts.

8.1. The prescribed rent amount to be waived includes (1) licence fee, (2) any amount payable by tenant to landlord that is determined by the gross turnover of any business carried on by the tenant at a property or part of a property, and (3) any amount payable by tenant to landlord as property tax for the property; but (4) it excludes any service charge and maintenance charge.³²

8.2. The prescribed rent amount to be waived is calculated based on the applicable formulae in the Third to Sixth Schedules in the RMM Regulations. The appropriate Schedules to refer to are as follows:

	Rental Relief	Additional Rental Relief
Type A property (generally commercial properties) ³³	<u>Third</u> Schedule ³⁴	<u>Fifth</u> Schedule ³⁵
Type B property (generally industrial or office properties) ³⁶	<u>Fourth</u> Schedule ³⁷	<u>Sixth</u> Schedule ³⁸

8.3. The Third to Sixth Schedules are *each* divided into 3 Parts, as follows:

8.3.1. Part 1: if there is *no* sublease, i.e. formulae applicable to the lease agreement(s) between the landlord and the PTO(s) directly.

8.3.2. Part 2: if there is a sublease, i.e. formulae applicable to the lease agreement(s) between the other tenant(s) (who is not a PTO) and their respective landlord(s) for the prescribed property.

8.3.3. Part 3: the definitions used in the formulae for Parts 1 and 2.

8.4. The **landlord may offset**³⁹ the Rental Relief and Additional Rental Relief **with the following financial assistance previously provided** to their tenants:

8.4.1. **Any goodwill deductions or relief amounts** which the landlord had granted the tenant *after* 1 February 2020 (or if granted before that date, must have been undertaken via an enforceable contract) and *before*

³² See definition of “rent” in Section 19B(1) of the Act, read with Regulation 5 of the RMM Regulations. See also Annex B of the Ministry of Law’s website press release of 30 July 2020: <https://www.mlaw.gov.sg/files/news/press-releases/2020/8/AnnexB.pdf>. Note that this definition differs from that in Regulation 3E(4) of the TRC Regulations for relief from holding over: see main text of footnote 105 below.

³³ Refer to main text of footnote 21 above.

³⁴ Regulation 10 of the RMM Regulations.

³⁵ Regulation 12 of the RMM Regulations.

³⁶ Refer to main text of footnote 22 above.

³⁷ Regulation 11 of the RMM Regulations.

³⁸ Regulation 13 of the RMM Regulations.

³⁹ https://www.mlaw.gov.sg/files/rentalreliefframework/calculation_of_rental_waivers.pdf and Annex B of the Ministry of Law’s website press release of 30 July 2020: <https://www.mlaw.gov.sg/files/news/press-releases/2020/8/AnnexB.pdf>

the notice of cash grant, for the sole purpose of providing relief to the tenant from economic hardship arising from a COVID-19 event.⁴⁰

- 8.4.2. Any **property tax rebate** which the landlord has passed on or agreed to pass on to the tenant pursuant to Section 29(2) of the Act and the PTR Regulations.⁴¹
 - 8.5. The **prescribed rent amount that is deemed to be waived may not be commensurate with the actual amount of cash grant disbursed by IRAS.**⁴² In other words, *there is a possibility* that the landlord may receive *less* cash grant than the prescribed rent amount (i.e. the Rental Relief) that the landlord is now prohibited from collecting from the tenant. This is because the cash grant is computed based on the IRAS' assessed Annual Value of the property⁴³, which may not be the same as the prevailing market rent rate.
 - 8.6. As the **rental waiver applies retrospectively**⁴⁴, if the tenant had already paid the prescribed rent amount for the prescribed period (which otherwise need not have been paid as they are deemed waived), that paid-up amount shall be applied to reduce the tenant's rent for the period immediately after the prescribed period, or where there is no such remaining period, then that paid-up amount shall be refunded to the tenant.⁴⁵
 - 8.7. Where the prescribed property is sublet, the intermediary landlord will receive the rental waiver as well, regardless of whether they meet the Rental Relief criteria, and that **intermediary landlord is in turn obliged to provide the necessary rental waivers to their own tenant** (i.e. subtenant).⁴⁶ This way, the rental relief would ultimately trickle down to the PTO from the head landlord within the PTO chain.
9. Upon receipt of the notice of cash grant, **the landlord must serve a copy of the notice to its tenant within 4 working days.**⁴⁷ Where there is a sublease, upon receipt of the notice of cash grant from the landlord, **the tenant (or intermediary landlord) must serve a further copy of the notice to the subtenant within 4 working days thereafter.**⁴⁸ Failure to comply with the above service timeline without reasonable excuse is a criminal offence punishable with a fine not exceeding S\$1,000.⁴⁹ Service may be done either

⁴⁰ Incorporated in the definition of "F" in the formulae for the Third Schedule (Rental Relief for Type A Property) of the RMM Regulations, as per paragraphs 1(k)(i) and (ii) in Part 3 therein, which definition is re-used for the Fifth Schedule (Additional Rental Relief for Type A Property) as per paragraph 1(a) of Part 3 therein; also incorporated in the definition of "D" in the formulae for the Fourth Schedule (Rental Relief for Type B Property), as per paragraphs 1(g)(i) and (ii) in Part 3 therein, which definition is re-used for the Sixth Schedule (Additional Rental Relief for Type B Property) as per paragraph 1(a) of Part 3 therein.

⁴¹ Incorporated in the definition of "F" and "F₀" in the formulae for the Third Schedule (Rental Relief for Type A Property) of the RMM Regulations, as per paragraphs 1(k)(iv) and 1(l) in Part 3 therein, which definition is re-used for the Fifth Schedule (Additional Rental Relief for Type A Property) as per paragraph 1(a) of Part 3 therein; also incorporated in the definition of "D" and "D₀" in the formulae for the Fourth Schedule (Rental Relief for Type B Property), as per paragraphs 1(g)(iv) and 1(h) in Part 3 therein, which definition is re-used for the Sixth Schedule (Additional Rental Relief for Type B Property) as per paragraph 1(a) of Part 3 therein.

⁴² Section 19H(3) of the Act.

⁴³ The cash grant is calculated based on the Annual Value of the property for Year 2020 as assessed by IRAS at 13 April 2020: see <https://www.iras.gov.sg/irashome/Schemes/Property/Government-cash-grant-announced-in-Fortitude-Budget/>

⁴⁴ As the prescribed period is from 1 April up to 31 July 2020, whereas the amendments only came into force on 31 July 2020.

⁴⁵ Sections 19H(2) and 19J(2) of the Act.

⁴⁶ See paragraph 9 of <https://www.mlaw.gov.sg/news/press-releases/2020-07-30-commencement-of-rental-relief-framework>, and its Annex B: <https://www.mlaw.gov.sg/files/news/press-releases/2020/8/AnnexB.pdf>

⁴⁷ Section 19F(3) of the Act read with Regulation 8(1) of the RMM Regulations.

⁴⁸ Section 19F(4) of the Act read with Regulation 8(2) of the RMM Regulations.

⁴⁹ Section 19F(5) of the Act.

personally, by registered post or sending to the tenant's last email address.⁵⁰ It is also encouraged – though not legally required – for the head landlord to also serve a copy of the notice of cash grant to the end-tenant-occupier directly.⁵¹

10. The Government provides **some support for landlords to meet the above obligations**:
 - 10.1. If a landlord faces difficulties in meeting their obligations for the Additional Rental Relief, **the landlord may apply for Assessor's Determination that the landlord satisfies the prescribed criteria to qualify for 50% reduction**⁵² of the Additional Rental Relief it must bear. The prescribed criteria are as follows⁵³:
 - 10.1.1. The landlord is an individual or sole proprietorship;
 - 10.1.2. The aggregate of annual values of all investment properties (including the prescribed property) owned by the landlord (whether solely or jointly with others) is not more than S\$60,000 as at 13 April 2020; and
 - 10.1.3. The rental income derived by the landlord from the prescribed property in the year of assessment 2019 constituted 75% or more of the landlord's gross income in that year of assessment.
 - 10.1.4. Where the prescribed property is jointly-owned by various landlords, all the landlords must each apply for Assessor's Determination and they must all satisfy the above prescribed criteria.⁵⁴
 - 10.2. Individual landlords can (1) apply to defer their principal and interest payments on their commercial property loans up to 31 December 2020, and/or (2) opt to extend their loan tenure by up to the corresponding deferment period.⁵⁵
11. **Until the notices of cash grant are issued, an *automatic***⁵⁶ **moratorium on rent recovery applies in the interim**, as follows:
 - 11.1. All the Rental Relief criteria in paragraph 6 above must first be met.
 - 11.2. Moratorium period is from 31 July 2020⁵⁷ to the *earlier* of the following: (1) date of the notice of cash grant, or (2) 31 December 2020⁵⁸.
 - 11.3. During this moratorium period, the landlord may not take any of the enumerated actions against a PTO in relation to the non-payment of rent under the lease agreement, which includes suing the tenant (or staying such proceeding if already begun), applying for winding-up, judicial management or bankruptcy of

⁵⁰ Section 19F(3) and (3) of the Act, read with Regulation 8(4) of the RMM Regulations.

⁵¹ Paragraph 3(b) of <https://www.mlaw.gov.sg/news/press-releases/2020-07-30-commencement-of-rental-relief-framework>

⁵² Section 19O(3) of the Act, read with Regulation 39 of the RMM Regulations.

⁵³ Sections 19M(2)(c) and 19N(1)(c) of the Act, read with Regulation 38(1) of the RMM Regulations. See also the summary in Annex C of the Ministry of Law's website press release of 30 July 2020: <https://www.mlaw.gov.sg/files/news/press-releases/2020/8/AnnexC.pdf>

⁵⁴ Regulation 38(2) of the RMM Regulations.

⁵⁵ More information, see <https://www.mas.gov.sg/regulation/covid-19>

⁵⁶ Automatic, that is to say, *without* having to serve a Notification for Relief on the landlord.

⁵⁷ Section 19G(3) of the Act read with footnote 3 above.

⁵⁸ Section 19G(3)(b) of the Act read with Regulation 9 of the RMM Regulations.

the tenant, terminating of lease, exercising the right of re-entry or forfeiture, or withholding of utility services or other services from the tenant.⁵⁹

11.4. Definition of non-payment of “rent” for the purpose of this automatic moratorium includes (1) licence fee, (2) any amount payable by a tenant to a landlord that is determined by the gross turnover of any business carried on by the tenant at a property or part of a property, and (3) any amount payable by the tenant to the landlord as property tax for the property; but (4) it excludes any service charge and maintenance charge.⁶⁰

12. **A landlord may apply for an Assessor’s Determination**⁶¹, whose decision is not appealable⁶², for the rental relief assessor to determine any of the 3 points below:

12.1. Whether the tenant is a PTO (and therefore entitled to Rental Relief);

12.2. Whether the tenant satisfies the prescribed additional criteria for Additional Rental Relief; or

12.3. Whether the landlord satisfies the prescribed criteria for a 50% reduction⁶³ of the Additional Rental Relief to be borne by the landlord.

12.4. For the first two options above, the **landlord must apply for Assessor’s Determination within 10 days**⁶⁴ **after receipt of the notice of cash grant**. If the Assessor determines that the tenant is *not* entitled to Rental Relief or Additional Rental Relief, then any such rent amounts which have been waived are recoverable as a debt due from the tenant to the landlord.⁶⁵

13. For the purpose of determining whether a tenant is a PTO or making the above application for Assessor’s Determination in respect of the PTO, a landlord may, by written notice to tenant, **require the tenant to provide within 5 working days, the following prescribed information and documents**⁶⁶:

13.1. The name, address, and email address or telephone number of the tenant;

13.2. A description of the tenant’s business; and

13.3. The tenant’s financial statements, unaudited balance-sheet, profit and loss statement, cash flow statement and/or the tenant’s statutory declaration.⁶⁷ A statutory declaration which contains false or misleading material particular, and the declarant ought reasonably to know that, or is reckless as to whether,

⁵⁹ Section 19G(2) of the Act.

⁶⁰ Definition of “rent” in Section 19B(1) of the Act, read with Regulation 5 of the RMM Regulations. This definition differs from that in Regulation 3E(4) of the TRC Regulations for relief from holding over: see main text of footnote 105 below.

⁶¹ Section 19N of the Act, read with Part 3 of the RMM Regulations.

⁶² Section 19N(4) of the Act.

⁶³ Section 19O(3) of the Act, read with Regulation 39 of the RMM Regulations.

⁶⁴ Regulation 23(1)(a) of the RMM Regulations. The Regulation stipulates “10 days” which may be contrasted against other provisions in the RMM Regulations where “working days” is specified for other timelines; however, the Ministry of Law’s website states “10 working days” for the application for Assessor’s Determination: see <https://www.mlaw.gov.sg/covid19-relief/rental-relief-framework-for-smes#eligibility>

⁶⁵ Section 19O(1) and (2) of the Act.

⁶⁶ Section 19U of the Act, read with Regulation 42 and Part 1 of the Seventh Schedule of the RMM Regulations.

⁶⁷ The exact scope of documents which the landlord may request depends on which scenarios in Part 1 or Part 2 of the Seventh Schedule in the RMM Regulations, the tenant in question falls within. Part 1 is for determining whether tenant is a PTO, whereas Part 2 is for determining whether the PTO satisfies the prescribed additional criteria to qualify for Additional Rental Relief.

it is false or misleading nature, is a criminal offence punishable to a fine up to S\$5,000 and/or imprisonment up to 12 months.⁶⁸

14. A notice by IRAS that a tenant is or is not a PTO is *prima facie* evidence of that fact⁶⁹. Further, the Ministry of Law's website press release of 30 July 2020 states that: "*the issuance of notices of cash grant by Inland Revenue Authority of Singapore (IRAS) to qualifying property owners, i.e. owners of property with eligible tenant-occupiers.... The majority of qualifying property owners should receive the notice by mid-August 2020.*"⁷⁰ Therefore, a **notice of cash grant would be *prima facie* evidence that the tenant is a PTO**. However, this is not conclusive, and if it turns out that any of the Rental Relief criteria is not fulfilled, IRAS may recover the cash grant that was disbursed.⁷¹
15. In addition to granting the above 2 types of rental relief, the recent amendments also **allow eligible tenants to pay their outstanding rent over a longer period of time**. A PTO who is entitled to Additional Rental Relief (i.e. they must satisfy the prescribed additional criteria in paragraph 7 above) may, by written notice, elect to pay the outstanding rent and the attendant interest or other charge due and payable under the lease agreement, in accordance with a **statutory repayment schedule**, as follows:
 - 15.1. The eligible PTO must serve written notice on its landlord **before 19 October 2020**⁷². Thereafter, the **statutory repayment schedule forms part of the lease agreement** and prevails over any inconsistent term in the lease agreement.⁷³
 - 15.2. The statutory repayment schedule must comply with all of the following:
 - 15.2.1. The outstanding rent is only for any period from 1 February 2020 to 19 October 2020 (inclusive).⁷⁴
 - 15.2.2. The maximum outstanding rent that can be subject to a statutory repayment schedule is up to **5 months' rent for Type A property or 4 months' rent for Type B property** excluding any amount that is waived under the rental relief and Additional Rental Relief granted.⁷⁵
 - 15.2.3. The interest or other charge payable on the outstanding rent under the lease agreement **shall not exceed 3% per annum**.⁷⁶
 - 15.2.4. Maximum repayment period **shall not exceed 9 months**⁷⁷ and first repayment instalment **must start before 1 November 2020**.⁷⁸
 - 15.2.5. The **monthly repayment instalment shall be in equal amounts**⁷⁹ and is **calculated using the formula** in Regulation 40(4) and (6) of the RMM Regulations.

⁶⁸ Section 19W of the Act.

⁶⁹ Section 19N(2) of the Act.

⁷⁰ Paragraphs 2 and 4: <https://www.mlaw.gov.sg/news/press-releases/2020-07-30-commencement-of-rental-relief-framework>

⁷¹ Section 19E of the Act, read with Regulation 7 of the RMM Regulations.

⁷² Section 19P(2) of the Act, read with the main text of footnote 94 below.

⁷³ Section 19P(4) of the Act.

⁷⁴ Section 19P(2) of the Act, read with the main text of footnote 94 below.

⁷⁵ Section 19P(5), read with Regulation 40(5) of the RMM Regulations.

⁷⁶ Section 19P(2)(b) and (c) of the Act, read with Regulation 40(1) of the RMM Regulations.

⁷⁷ Section 19P(2)(d) of the Act, read with Regulation 40(2) of the RMM Regulations.

⁷⁸ Section 19P(2)(g) of the Act, read with Regulation 40(4) of the RMM Regulations.

⁷⁹ Section 19P(2)(e) of the Act.

- 15.3. The **statutory repayment schedule ceases to have effect and all rent that remains outstanding becomes immediately payable** (including any interest or other charges that would have otherwise accrued from the occurrence date under the lease agreement, but for the statutory repayment schedule) **upon the occurrence of any of the following events**⁸⁰:
- 15.3.1. If the PTO **fails to pay any of the repayment instalment within 14 calendar days**⁸¹ after the instalment becomes due under the schedule;
 - 15.3.2. If the **PTO terminates or repudiates the lease agreement** during the repayment period in the statutory repayment schedule; or
 - 15.3.3. The **PTO's landlord terminates the lease agreement** for any of the default by the PTO other than a failure to pay repayment instalment.
- 15.4. If the PTO or its landlord repudiates or terminates the lease agreement, or if 2 or more repayment instalments remain outstanding under the statutory repayment schedule, the **PTO's landlord may by written demand require the PTO to submit various prescribed documents within 30 calendar days**, such as the following⁸²:
- 15.4.1. Balance-sheet, profit and loss statement, cash flow statement, and statement of changes in equity of the PTO, for the period of 1 April 2020 to the termination or repudiation date;
 - 15.4.2. A statutory declaration (it is a criminal offence to declare false or misleading material particular⁸³) on whether the PTO has disposed of or provided as collateral any property during the above period, and if so, details of such disposal or collateral; and
 - 15.4.3. A reasonable proposal for the settlement of the outstanding rental arrears and the interest and other charges payable.
 - 15.4.4. Failure to comply with the above without reasonable excuse is a criminal offence punishable with a fine not exceeding S\$5,000.⁸⁴
16. **There is now a restriction on a landlord's entitlement to draw down on security deposit** to discharge outstanding rent or other moneys payable or for any other default, which accrued in any period from 1 February 2020 to 19 October 2020⁸⁵. During the period from 31 July 2020 to 19 October 2020, **the landlord's draw down on security deposit is limited up to the balance of 1 month's rent remaining in security deposit**⁸⁶. Where the landlord had already drawn down on the security deposit *before* 31 July 2020, the **PTO shall replenish the security deposit to the extent that the remaining amount of security deposit is the equivalent amount of 1 month's rent**.⁸⁷ However, if the PTO has served a

⁸⁰ Section 19Q of the Act.

⁸¹ Section 19Q(2)(a) of the Act, read with Regulation 41(1) of the RMM Regulations.

⁸² Section 19Q(3) and (5) of the Act, read with Regulation 41 of the RMM Regulations.

⁸³ See main text of footnote 68 above.

⁸⁴ Section 19Q(4) of the Act.

⁸⁵ Section 19S of the Act.

⁸⁶ See Section 19S(3) of the Act, where "rent" is defined as the amount of rent or other moneys that is used to determine the amount of the security deposit.

⁸⁷ Section 19T(2) of the Act.

written notice on the landlord for a statutory repayment schedule, the PTO's obligation to replenish the security deposit is postponed until the statutory repayment schedule ceases or expiry of its maximum repayment period.⁸⁸

17. Apart from the above summary, more details, examples, infographics and FAQs on the rental relief framework may be obtained from the Ministry of Law's dedicated microsite: <https://www.mlaw.gov.sg/covid19-relief/rental-relief-framework-for-smes>

Other general amendments relating to leases and licences

18. As updated in our earlier article⁸⁹, the Act already provides *temporary* relief to a tenant who is unable to perform an obligation due on or after 1 February 2020⁹⁰, which arises under a lease agreement entered into before 25 March 2020 (or if renewed thereafter, must be an automatic renewal or in exercise of an existing right of renewal)⁹¹, and that inability is to a material extent caused by a COVID-19 event⁹². Once a Notification for Relief⁹³ has been served on the landlord, a moratorium applies whereby the landlord is prohibited from taking any of the actions listed in Section 5(3) of the Act, during the prescribed period of 6 months from 20 April 2020 to 19 October 2020⁹⁴.
19. **The list of prohibited actions is now expanded** – the following are also prohibited unless agreed by the tenant: an increase of any charges or interest rate (unless it was pre-agreed in the contract), the imposition of any new charges on the tenant, or requiring any part of a security deposit to be replaced by the tenant.⁹⁵
20. For *most* scheduled contracts, where a contracting party is unable to pay an amount due and payable within the prescribed period, then even if the contract permits late payment interest or other charge, such amount shall not exceed 5% per annum simple interest.⁹⁶ However, this **ceiling on late payment interest or other charge does not apply to a lease or licence of non-residential immovable property**.⁹⁷
21. With the Singapore Government's implementation of severe movement restrictions, such as the circuit breaker from 7 April 2020 to 1 June 2020⁹⁸, and Phase One of the exit from the circuit breaker from 2 June 2020 to 18 June 2020⁹⁹, **a tenant may face the legal impossibility of vacating their premises during these periods**, even though the lease or licence has expired or was terminated. Technically, the tenant may be holding over the premises, which may then entitle the landlord to charge double rent, as may be provided for in the lease or licence, or under written law¹⁰⁰. The recent amendments seek to correct this unfairness. Now, if (1) the tenant has served a Notification for Relief on the

⁸⁸ Section 19T(3) of the Act.

⁸⁹ <https://www.harryelias.com/content/e-briefing-summarising-covid-19-temporary-measures-act-2020-commercial-landlords>

⁹⁰ Section 5 of the Act.

⁹¹ Section 4(1)(a) of the Act.

⁹² Refer to definition of "COVID-19 event" in Section 2 of the Act.

⁹³ As required under Section 5(1)(c) of the Act.

⁹⁴ Section 3(1) of the Act read with COVID-19 (Temporary Measures) (Prescribed Period) Order 2020 made on 20 April 2020, available at: <https://sso.agc.gov.sg/SL/COVID19TMA2020-S302-2020?DocDate=20200420>

⁹⁵ Section 5(3)(o) of the Act, read with Regulation 3A of TRC Regulations.

⁹⁶ Section 7A(2) of the Act, read with Regulation 3C of TRC Regulations

⁹⁷ Section 7A(1)(a) of the Act, read with Regulation 3B(1) of the TRC Regulations, whereby lease or licence of non-residential immovable property is *not* one of the prescribed contracts (which is a subset of the scheduled contracts).

⁹⁸ <https://www.moh.gov.sg/news-highlights/details/circuit-breaker-to-minimise-further-spread-of-covid-19>

⁹⁹ <https://www.moh.gov.sg/news-highlights/details/end-of-circuit-breaker-phased-approach-to-resuming-activities-safely> and <https://www.moh.gov.sg/news-highlights/details/moving-into-phase-two-of-re-opening>

¹⁰⁰ As provided in Section 28(4) Civil Law Act (Cap. 43).

landlord, and (2) due to a COVID-19 event¹⁰¹ and (3) **after taking reasonable steps**¹⁰², the (3) **tenant is unable to vacate the property** after the termination or expiry of the lease or licence and up to 19 October 2020, then (4) **the tenant is not liable to pay in excess of the prescribed amount**¹⁰³. The prescribed amount depends on when was the tenant's inability to vacate, and whether the tenant had operated at the premises during the holding over, as follows:

- 21.1. If the tenant had carried on its business, undertaking or work at the property (or otherwise known as '**operating' at the premises**), the prescribed amount is the *lower* of the following: (1) the amount payable under the lease or licence for holding over, if provided for; or (2) at the option of the landlord, either (a) the rent payable by the tenant as if the lease or licence remained in force based on the last rent payable, or (b) the market rent of the property for that period¹⁰⁴, whereby "rent" includes any service charge, maintenance charge and public utility charge¹⁰⁵; but does not include any activity for the purpose of maintaining the property in a clean and sanitary condition or in a state of good repair¹⁰⁶; or
- 21.2. In respect of any other period where the tenant **did not operate at the premises** during the holding over period, then depending on when is this period:
 - 21.2.1. If the holding over period is **within 7 April 2020 to 18 June 2020** (both dates inclusive, which is the period of the circuit breaker up till end of Phase One), the prescribed amount is that equal to the total amount of service charge, maintenance charge and public utility charge payable under the lease or licence for that other period, as if the lease or licence were in force during that other period¹⁰⁷; or
 - 21.2.2. If the holding over period is **outside 7 April 2020 to 18 June 2020** (i.e. before or after the circuit breaker and Phase One), the prescribed amount is the *lower* of the following: (1) the amount payable under the lease or licence for holding over, if provided for; or (2) at the option of the landlord, either (a) 50% of the rent payable by the tenant as if the lease or licence remained in force based on the last rent payable; or (b) 50% of the market rent of the property for that period¹⁰⁸.
- 21.3. According to the FAQs on the Ministry of Law's website¹⁰⁹, some factors to determine the above elements include the following:
 - 21.3.1. **Examples of operating at the premises:** if activities were performed on the premises that went towards the functioning of tenant's business, (e.g. if tenancy was for a warehouse and frozen food was still stored in the warehouse even though tenant was unable to access the warehouse; or if tenancy was for a corporate office, which usually

¹⁰¹ Refer to definition of "COVID-19 event" in Section 2 of the Act, which would include the circuit breaker and Phase One.

¹⁰² Regulation 3D of the TRC Regulations.

¹⁰³ Section 7B the Act.

¹⁰⁴ Regulations 3E(1)(a) and 3E(2)(a) of the TRC Regulations.

¹⁰⁵ Regulation 3E(4) of the TRC Regulations. This definition differs from Section 19B(1) of the Act and Regulation 5 of the RMM Regulations for automatic moratorium on recovery of rent pending notice of cash grant: see main text of footnote 60 above.

¹⁰⁶ Regulation 3E(3) of the TRC Regulations.

¹⁰⁷ Regulation 3E(1)(b) of the TRC Regulations.

¹⁰⁸ Regulation 3E(2)(b) of the TRC Regulations.

¹⁰⁹ <https://www.mlaw.gov.sg/covid19-relief/relief-for-tenants-unable-to-vacate-premises>

operates with 500 staff on-site but a skeletal crew of 10 essential staff returned to office daily for receiving and sending documents for business purpose; or tenancy is for a car sale and repair business, and the tenant's staff worked onsite to operate its corporate office within the same premises even though tenant did not resume selling or repairing of any cars). But *not* if the only activities performed were in connection with the maintenance of the premises, or activities necessary for health or safety reasons (e.g. cleaning, servicing).

21.3.2. **Examples of reasonable steps to vacate the premises:** (1) contacting at least one moving company to find out if that company would be able to help with vacating the premises; (2) making good efforts to independently engage workers to help with vacating the premises; (3) moving small items out of the premises independently, if these items were all that was preventing tenant from moving out of the premises; (4) enquired with Ministry of Trade and Industry ("**MTI**"), or sought advice, and was told that tenant could not take the steps required to vacate the premises; (5) applied to MTI for a Time-Limited Exemption or a General Exemption in order to take the steps required to vacate the premises, and were rejected; (6) MTI approved tenant's application for a Time-Limited Exemption or a General Exemption to take the steps required to vacate the premises, but, despite taking such steps, tenant could not vacate the premises for other COVID-19 related reasons.

21.3.3. **Examples of what are included in "rent":** (1) service charges may include charges for lifts, security, and cleaning services; (2) maintenance charges may include charges for general maintenance and repairs; and (3) utilities charges may include charges for water, electricity, air conditioning, telecommunications network, gas and any sewerage or conservancy charges.

Conclusion

22. The above amendments reflect the Singapore Government's active listening to feedback from the ground to ensure that measures are updated timeously where necessary to meet the needs of individuals and businesses to mitigate the effects of COVID-19 pandemic. The aim is to equitably share the economic hardship between the Government, landlords and tenants, so that they may ride through the storm together.

NOTE: The content of this article is for general information only and does not constitute any form of legal advice. Please seek specific legal advice regarding your specific circumstances.

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