

I. INTRODUCTION

1. Following from the further boosts of government support in the Fortitude Budget, the COVID-19 (Temporary Measures) (Amendment) Bill (the “Bill”) was passed in Parliament on 5 June 2020 to introduce new measures and reliefs to the COVID-19 (Temporary Measures) Act 2020 (the “Act”).

[\[Click here to access the Bill\]](#)

2. This Legal Update touches on the rental and holding-over reliefs introduced in the Bill as announced in the Fortitude Budget. While the full details and qualifying criteria are still pending release of the subsidiary legislations, here is what you can take note of now.

II. RENTAL RELIEF TO PRESCRIBED TENANT-OCCUPIERS OF QUALIFYING PROPERTIES

Who Will Be Entitled to the Rental Relief?

3. For Rental Relief, the general criteria is:
 - a. Prescribed properties covering **qualifying commercial, industrial and office properties**;
 - b. Prescribed tenant-occupiers (“PTO”) covering **qualifying SMEs, Non-Profit Organisations (NPOs) and tenants of government properties**. For purpose of the Act, SMEs are defined as enterprises with a turnover of not more than S\$100 million per annum calculated based on Corporate Tax and Individual Income Tax returns for the Year of Assessment 2019, **assessed based on a group level**; and
 - c. The lease or license agreement was entered into (other than automatically or in exercise

of a right of renewal) **before 25 March 2020**, and must be in force on **1 April 2020**.

4. For Additional Rental Relief, the qualifying SME must also show a **35% or more drop in average monthly revenue** on an outlet level from April to May 2020, compared to April to May 2019:

What Does the Rental Relief Cover?

5. Taking into account the Property Tax Rebates to landlords which are statutorily mandated to be passed down to their tenants, an eligible PTO will receive rental waivers of / up to:-

Type / By	Qualifying Commercial Ppty	Qualifying Industrial / Office Ppty
Rental Relief (Government)	2 months (April to May 2020)	1 month (April 2020)
Additional Rental Relief (Landlord)	2 months (June to July 2020)	1 month (May 2020)
Total	4 months	2 months

6. No interest or other charge will be payable on the waived amount.

How Does the Rental Relief Framework Work?

7. The framework is comprised of a few layers:

(A) Notice of Cash Grant by IRAS to Landlord:

8. Before disbursing the cash grant under the framework, the governing Authority, i.e. IRAS, must first issue a Notice of Cash Grant to the Owner (the “Notice”).

(B) Service of Notice to PTO:

9. The Owner must serve a copy of this Notice to the PTO within a prescribed time. If there is a chain of sub-landlords and sub-tenants, each party must serve a copy of the notice down the chain until it reaches the final PTO.

(C) Waiver of Rent Payable throughout PTO Chain Once Notice Is Received:

10. Once the Notice is received, the prescribed rental (including interests or other charge) for the applicable relief period will be automatically waived.

(D) Temporarily Banned Actions:

11. To maintain status quo, the Bill prohibits the landlord from taking certain actions against the tenant (or its guarantor / surety) from the commencement of the Bill until receipt of the Notice or some prescribed date (whichever earlier).
12. During this period, the landlord cannot:
 - a. Commence or continue court or arbitral proceedings under the Arbitration Act;
 - b. Commence insolvency proceedings;
 - c. Commence or levy execution, distress or other legal process;
 - d. Terminate the lease agreement;
 - e. Exercise a right of re-entry or forfeiture under the lease agreement, or exercise any other right that has a similar outcome;
 - f. Withhold utility services or other services from the tenant.

(E) Optional Installment Repayment Scheme for PTOs Who Qualify for Additional Rental Relief:

13. An eligible PTO can also elect to pay its rental arrears (including interest) in accordance with a statutory repayment schedule. To do so, the PTO must serve a written notice before 19 October 2020 on its landlord, guarantor/surety and such other prescribed person.
14. The general terms of the statutory repayment scheme are:
 - a. The repayment scheme is only applicable to outstanding rental arrears from 1 February to 19 October 2020, up to a maximum of:
 - (i) 5 months' base rent for commercial properties
 - (ii) 4 months' base rent for industrial and office properties
 - b. Interest on arrears is capped at 3% per annum.
 - c. Arrears are to be paid in equal instalments, which must start no later than 1 November 2020.
 - d. Repayment period is capped at a maximum of 9 months or the remaining lease term (whichever shorter).

Can a Landlord or Tenant Appeal to IRAS on the Disbursement of the Cash Grant?

15. No. The Bill expressly states that the Authority's decision to disburse or not to disburse a cash grant is not appealable.

What If the Landlord is Uncertain of or Disagrees with the Tenant's Entitlement to the Relief?

16. The Bill provides an assessment regime, where the landlord can apply to seek a determination by a Rental Relief Assessor, on:
- Whether the tenant satisfies the prescribed criteria for a PTO for Rental Relief; or
 - Whether the tenant satisfies the additional criteria for Additional Rental Relief.
17. However, before referring the matter for assessment, the landlord should try to directly discuss the matter with the tenant first, and seek clarifications and supporting documents.
18. A Rental Relief Assessor's Determination is not appealable, and may on application and with the leave of court, be registered as a court order.

What if the Landlord Cannot Afford to Cover the Additional Rental Relief?

19. The landlord can also apply to a Rental Relief Assessor and seek a determination on this.
20. The Rental Relief Assessor can take into consideration whether the landlord is indeed facing genuine financial hardship, the annual value of the property, or the proportion of the landlord's total income which is made up of rental income.
21. If the landlord satisfies the prescribed grounds for showing financial hardship, the Rental Relief Assessor may allow the Landlord to give only half of the required Additional Rental Waiver.

What Happens in the Event of a Default by an Eligible PTO Who Had Opted In For The Statutory Repayment Scheme?

22. In the event where:
- The PTO fails to pay a repayment instalment under the schedule within a prescribed time after the date the installment becomes due;
 - The PTO terminates or repudiates the lease agreement during the repayment period; or
 - The landlord terminates the lease agreement due to any other default by the PTO;
- the following terms will kick in:
- All arrears and interest payable thereon will immediately become payable; and
 - The landlord will be entitled to exercise its rights under the lease.

Can the Landlord Use the Security Deposit During This Prescribed Period?

23. The landlord can still use its existing security deposit to discharge the tenant's outstanding rent / interest or other defaults occurring between 1 February 2020 to 19 October 2020 – provided that 1-month's rent is kept untouched in the security deposit. If the security deposit has already been used up or is less than 1-month's rent even before the Bill commences, the tenant will need to top it up to 1-month's rent.
24. Where the tenant has opted into the statutory repayment scheme, it will only need to maintain the statutory minimum of 1 month's rent in the security deposit for the time being, while its contractual obligation to replenish the security deposit up to the agreed sum will be deferred until after the last instalment is made or when the statutory repayment schedule ceases to

apply (whichever earlier).

What If the PTO Already Paid Rent For The Months Covered By The Rental Relief?

- 25. The landlord must account for the paid rental, by reducing the rent payable by the PTO in the ensuing month(s).
- 26. However, if the lease has ended or is coming to an end, the landlord must immediately refund to the PTO, the deductible amount or balance of such sum.

If the Tenant is a new SME and does not have any records of sales revenue in the months of April and May 2019, can it still qualify for the Additional Rental Relief?

- 27. Yes. The subsidiary legislation will provide alternative criteria / period to assess the impact of Covid-19 on the PTO's performance.

III. RELIEF FROM HOLDING-OVER FEES

- 28. The Tenant of a non-residential property will not be liable for any sums that it may be otherwise liable for, where:
 - a. It is unable to vacate the premises after the lease terminates or expires;
 - b. The termination / expiry of the lease occurs before 19 October 2020; and
 - c. The Tenant's inability was caused by a COVID-19 event, subject to any other prescribed conditions.
- 29. However, if the tenant continues to derive benefits from the premises, there would be an imposition of certain prescribed sums – which will be clarified in the subsidiary legislations to be published.

IV. FINAL WORDS

- 30. We will update this article when the relevant subsidiary legislations are published. For the time being, it is important for potentially eligible landlords and tenants to take note of these new reliefs and measures and consider the potential implications in their plans, particularly if parties are engaged in ongoing negotiations on their agreements.
- 31. If you have any questions on the Bill or if we can assist you on any questions concerning COVID-19, please feel free to reach out to us.

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