

Legal Update
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ADSAN LAW

RE-ALIGN FRAMEWORK TO RENEGOTIATE CONTRACTS FOR BUSINESSES SIGNIFICANTLY IMPACTED BY COVID-19

“The framework will provide a quick and fair way for businesses to realign and move forward by allowing selected contracts to be renegotiated by way of mutual agreement with the counterparties. If they are unable to agree, the contract may be terminated within the provided parameters. Businesses will remain liable for outstanding obligations but will not need to pay early termination penalties.”

COVID-19 (Temporary Measures) Act 2020 was enacted by the Singapore Government to deal with unprecedented effects of the coronavirus pandemic. The Re-Align Framework which came into effect on 15 January 2021 provides the framework for eligible small and micro businesses severely impacted by COVID-19 to renegotiate selected types of contracts or end them early.

We hope that this FAQ will assist parties who would like to find out more about the Re-Align Framework.

Question 1: What are the remedies under the Re-Align Framework?

Affected Businesses which are eligible will be able to avail themselves of the following remedies under the Re-Align Framework:

1. Renegotiate the terms of the contract and the termination of the contract
2. Enter into a repayment scheme for
 - a. hire-purchase or conditional sales agreements for (i) commercial equipment; or (ii) commercial vehicles, which are not entered into with a bank, or with a finance company under the Finance Companies Act (Cap. 108); and

- b. rental agreements for (i) commercial equipment or (ii) commercial vehicles.
- 3. Seek a repricing for a contract affecting essential services or national interest

Question 2: What qualifies as an Affected Business under the Re-Align Framework?

Affected Businesses must meet all 4 criteria as listed below:

1 ENTITIES

Entities covered by the Re-Align Framework include the following:

- a. Companies incorporated in Singapore
- b. Limited Liability Partnerships and Sole Proprietors
- c. Individuals carrying on business or trade
- d. Certain Non-Profit Organisations (NPOs)
- e.

2 SPECIFIED CONTRACTS

The framework is designed to cover key business-to-business contracts, and will only apply to a contract that:

- a. Is governed by Singapore law;
- b. Was entered into before 25 March 2020;
- c. Has at least one party who has a place of business in Singapore; and
- d. Falls within the following categories (“Scheduled Contracts”)
 - i. Leases or licences for non-residential immovable property;
 - ii. Hire-purchase and conditional sales agreements for commercial equipment or commercial vehicles (except agreements entered into with banks and finance companies regulated by the Monetary Authority of Singapore)
 - iii. Rental agreements for commercial equipment or commercial vehicles;
 - iv. Contracts for sale and purchase of goods and services.

3 EXCLUDED CONTRACTS

The following contracts are excluded from the Re-Align Framework, even if they fall within the list of Specified Contracts (“Excluded Contracts”):

- a. Consumer contracts
- b. Employment contracts
- c. Insurance contracts
- d. Leases or licences for non-residential immovable property which have a term of more than five years

- e. Contracts made in connection with a financial transaction, or for the supply of financial services (e.g. loan agreements, insurance agreements, commodities contracts, derivatives contracts, factoring contracts), except hire-purchase
- f. Construction and supply contracts
- g. Contracts for the carriage of goods for freight by sea, land or air, including any contract for freight forwarding and logistic services
- h. Contracts for the supply, storage, transportation, collection, treatment or disposal of certain hazardous materials
- i. Contracts (or series of contracts) for the transfer for a business or part thereof as a going concern
- j. Contracts to which section 4 of the International Interests in Aircraft Equipment Act (Cap. 144B) apply
- k. Contracts to which the Sale of Goods (United Nations Convention) Act (Cap. 283A) apply
- l. An eligible party to a Contract Affecting Essential Services and National Interest may not terminate the contract under the Re-Align Framework if certain conditions are met but may renegotiate the pricing of the contract.

4 FINANCIALS

To be eligible for any relief under the Re-Align Framework (“the Framework”), the Affected Business must also meet the following financial criteria:

- a. Its annual revenue or if it is a member of a group, the annual revenue of the group, must not exceed S\$30 million; and
- b. It must have experienced at least a 70% fall in average monthly gross income for the period between 1 July 2020 to 31 December 2020, compared to the period between 1 July 2019 to 31 December 2019.

It must have commenced business by 1 September 2020 to be eligible under the Framework.

Question 3: When is the Re-Align Framework available?

For a period of six (6) weeks from 15 January 2021 to 26 February 2021 only.

The Relief of Renegotiation of Business Contracts

Question 4: What is the Process?

An Affected Business serves Notice of Negotiation on the other party or parties of the contract. The Affected Business and Other Party re-negotiate the contract during a 4-week Negotiation Period. If negotiation is successful, parties will proceed with the amended contract or terminate on mutually agreed terms. If the negotiation is not successful and the Other Party does not object to the Notice of Negotiation,

but the parties are not able to agree on the terms of termination and/ or the Other Party lodges a Notice of Adjustment, the matter will be referred to the Assessor for determination. If the negotiation is not successful and the Other Party lodges and serves Notice of Objection (objecting to the Affected Business's eligibility for relief) and/or Notice for Compensation (if the Other Party is a landlord who wishes to seek compensation from the Affected Business) , the matter will be referred to the Assessor for determination. The Registrar will then inform the Affected Business and Other Party of Assessor's Determination.

Question 5: What if I change my mind?

Generally, Notices can be withdrawn by the party who filed it before the Assessor's determination.

Question 6: I think I am eligible, what must I do?

Serve the Notice of Negotiation on the other party from 15 January 2021 onwards and no later than 26 February 2021 with all the supporting documents online at : <https://www.mlaw.gov.sg/realign/process-renegotiation#step1>

Question 7: I have been served a Notice of Negotiation, and I do not agree with it.

Serve a Notice of Objection within the 2-week Objection Period for your objection to be determined by an Assessor at

<https://www.mlaw.gov.sg/realign/process-renegotiation#step3>

Question 8: I have been served a Notice of Negotiation. I do not dispute the termination but parties are unable to agree on the consequences. What must I do?

Please serve a Notice of Adjustment within 2 weeks after the Objection Period to seek an Assessor's determination on the adjustment of rights and obligations under the contract at

<https://www.mlaw.gov.sg/realign/process-renegotiation#step4>

Question 9: I have been served a Notice of Negotiation. I am a landlord and I rely on the rental income for my livelihood.

Eligible small landlords may be eligible for hardship relief in the event of an early lease termination by a tenant under the Framework if:

- i. He is an individual, a sole proprietor or a company incorporated solely to hold the interest in one or more immovable property (including the immovable property in question).
- ii. the average monthly income from the rental from the property amounts to more than 50% of the average monthly gross income of the said individual or sole proprietor (or the shareholder of the landlord-company).
- iii. The gross annual income of the individual or sole proprietor (or the shareholder of the landlord-company) does not exceed S\$107,500.

If you think you are eligible, please serve a Notice for Compensation within the 2-week Objection Period with all the supporting documents at

<https://www.mlaw.gov.sg/realign/process-renegotiation#step3>

The Assessor will take into account all relevant circumstances in relation to the lease in determining the compensation for the termination.

The Relief of entering into a repayment scheme for Hire-Purchase and Equipment Rental contracts

Question 11: What is the process?

Hirers and renters (“Affected Business”) may seek assistance under the Repayment Scheme by serving a Notice of Revision on all parties to the contract and other interested parties (“Other Party”). The Affected Business and Other Party re-negotiate the contract during 4-week Negotiation Period. If negotiation is successful, parties will proceed with the amended contract/repayment schedule. If negotiation is not successful and the Other Party does not object to the Notice of Revision, the Revised repayment schedule will form part of the contract from date of the Notice of Revision. If negotiation is not successful and the Other Party objects to the Notice of Revision, the Contract continues pending the Assessor’s determination. The Registrar will then inform the Affected Business and Other Party of Assessor’s Determination.

Question 12: What are the contracts covered?

1. Hire-purchase or conditional sales agreements for (i) commercial equipment; or (ii) commercial vehicles, which are not entered into with a bank, or with a finance company under the Finance Companies Act (Cap. 108); and
2. Rental agreements for (i) commercial equipment or (ii) commercial vehicles.

Question 13: I think I am eligible, what must I do?

Please serve the Notice of Revision on your financing or leasing company and other required parties from 15 January 2021 onwards and no later than 26 February 2021 with all the supporting documents at <https://www.mlaw.gov.sg/realign/process-repayment-scheme#step1>

Question 14: What happens after I have served a Notice of Revision on the financing or leasing company?

The said financing/ leasing company is prohibited from taking certain legal and enforcement actions against you, in respect of your failure to pay any outstanding amounts due on or after 1 February 2020 to the date before the date of the Notice of Revision.

If parties can come to agreement, the revised repayment schedule in the Notice of Revision will form part of the contract from the date of the Notice of Revision.

Question 15: What are the arrears eligible for the repayment scheme?

Arrears covered are as follows:

1. Any outstanding moneys that are payable under the contract on or after 1 February 2020 to the day before the date of the Notice of Revision.
2. Any interest imposed on late payment of moneys in accordance with the Act.

Question 16: What is the period of repayment?

Up to a maximum of 18 months and each monthly repayment must be for an equal sum.

Question 17: When is the first instalment due?

By 26 March 2021.

Question 18: Can the financing or leasing company object to the Notice of Revision?

The financing or leasing company may serve a “Notice of Objection” within 2-week Objection Period on any one or more of the following grounds:

1. The contract in question is not a hire-purchase or conditional sales agreement or a lease of commercial equipment.
2. The Hirer/Renter does not satisfy the eligibility criteria for relief.
3. The Notice of Revision was not served in accordance with the stipulated requirements.
4. The Hirer/Renter's proposed repayment schedule does not meet the stipulated requirements.

Question 19: What happens when the financing or leasing company serves a Notice of Objection?

Unless the Notice of Objection is accepted or the Notice of Objection is withdrawn by the financing or leasing company, the Hirer/Renter's revised repayment schedule in the Notice of Revision will form part of the contract from the date of the Notice of Revision and will prevail over any term of the contract which is inconsistent with the revised repayment schedule.

Question 20: When will the revised repayment schedule cease to have effect?

1. The Hirer/Renter fails to pay an instalment under the revised repayment schedule within 14 days after the date on which the instalment is due to be paid under the revised repayment schedule;
2. The Hirer/Renter terminates or repudiates the contract during the period covered by the revised payment schedule;
3. The financing or leasing company terminates the contract for any default by the Hirer/Renter other than a failure to pay an instalment payment.

The Relief of a contract affecting essential service or national interest

Question 21: What is the process?

An Affected Business serves a Notice of Negotiation for Contract of National Interest on the other party or parties to the contract and interested parties to the contract. For Contracts of National Interest, the contract would need to be certified as such by a Minister. The Affected Business and Other Party re-negotiate the contract during 4-week Negotiation Period. If negotiation is successful, parties will proceed with the amended contract. If negotiation is unsuccessful, the Affected Business must lodge the Notice for Repricing which will be referred to the Assessor for determination. The Registrar will then inform the Affected Business and Other Party of Assessor's Determination.



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