

Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020

Introduction

On 12 August 2020, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020 ("**COVID-19 Bill**") which aims to provide temporary relief to reduce the impact of the COVID-19 pandemic and the effects of the Movement Control Order ("**MCO**") was tabled for first reading in the Dewan Rakyat. The COVID-19 Bill has also been tabled for second reading in the Dewan Rakyat on 18 August 2020.

In a nutshell, Part II of the COVID-19 Bill provides temporary relief measures in relation to any inability to perform certain contractual obligations, while Parts III to XVII of the COVID-19 Bill provide for modifications and amendments to certain Acts and Ordinances which are transient in nature.

In this Update, we examine and summarise some of the key temporary reliefs proposed under the COVID-19 Bill and the effective period for such reliefs.

1. Relief for Inability to Perform Contractual Obligations

Section 7 of the COVID-19 Bill provides that between 18 March 2020 to 31 December 2020 ("**Contract Relief Duration**"), a party who is prevented from carrying out or performing his obligations under a contract prescribed under the Schedule of the COVID-19 Bill (an "**Exempted Contract**") shall not be liable to the other party(ies) for such failure to perform and is relieved from his obligations during the entire Contract Relief Duration, if such failure is caused by the measures and restrictions imposed under the Prevention and Control of Infectious Diseases Act 1988. This would include the measures and restrictions imposed during the MCO, Conditional MCO and currently under the Recovery MCO.

Exempted Contracts prescribed under Section 7:

- (a) construction work contract or construction consultancy contract, and any other contract related to the supply of construction material, equipment or workers in connection with a construction contract;
- (b) performance bond or equivalent that is granted pursuant to a construction contract or supply contract;

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- (c) professional services contract;
- (d) lease or tenancy of non-residential immovable property;
- (e) event contract for the provision of, amongst others, any venue, accommodation, wedding or conference;
- (f) contract by a tourism enterprise and a contract for the promotion of tourism in Malaysia; and
- (g) religious pilgrimage-related contract.

Noteworthy:

It is unclear under the COVID-19 Bill whether contracts entered into after 18 March 2020 would also be covered under Section 7 of the COVID-19 Bill.

Further to that, Section 10 of the COVID-19 Bill goes on to provide that, “*any contract terminated, any deposit or performance bond forfeited, any damages received, any legal proceedings, arbitration or mediation commenced, any judgment or award granted and any execution carried out for the period from 18 March 2020 until the date of publication of this Act shall deem to have been validly termination, forfeited, received, commenced granted or carried out*”. This may potentially result in an influx of claims before the COVID-19 Bill comes into force.

2. Mediation Not a Prerequisite

Section 9 of the COVID-19 Bill provides that any dispute arising from any disability to perform any contractual obligation in an Exempted Contract, may be settled by way of mediation.

Noteworthy:

Unlike many other jurisdictions, Section 9 of the COVID-19 Bill does not turn mediation into a prerequisite dispute resolution mechanism prior to referring the disputes to court or arbitration, which diminishes the purpose of Section 9 of trying to reduce disputes arising from the COVID-19 pandemic from being referred to the courts.

3. Limitation Period Extended to 31 December 2020

Amendments to the Limitation Act 1953 (“**Limitation Act**”) (if carried through) will be deemed to have come into operation on 18 March 2020 and shall continue to remain in operation until 31 December 2020. Section 12 of the COVID-19 Bill provides that any limitation specified in Section 6 of the Limitation

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Act which expired between the period of 18 March 2020 to 31 August 2020 shall be extended to 31 December 2020.

Section 6 of the Limitation Act currently provides the limitation periods for *inter alia* actions of contract, tort and enforcements of awards.

Similarly, the following limitation periods specified in the respective paragraphs of the Sabah Limitation Ordinance and Sarawak Limitation Ordinance in respect of various different claims which expired during 18 March 2020 to 31 August 2020 have also been extended to 31 December 2020.

In particular, the extension of limitation period shall apply to the following provisions:

- (a) Sabah Limitation Ordinance: paragraph 1-4, 5(a) 8, 10 to 33, 35-79, 83-88, 90-95, 98, 100, 106, 107, 111 and 113 of the Schedule;
- (b) Sarawak Limitation Ordinance: 1-4, 5(a) 8-29, 31, 32, 34-78, 82-94, 96, 98, 100, 106, 107, 111 and 113 of the Schedule.

Noteworthy:

As a result to the proposed amendments above, a party who intends to bring an action in which the statutory limitation period would have expired during 18 March 2020 to 31 August 2020 will now have that limitation period extended to 31 December 2020.

4. Extension for Limitation Period Under the Public Authorities Protection Act 1948

Section 18 of the COVID-19 Bill provides that the limitation period specified in Section 2(a) of the Public Authorities Protection Act 1948 (“**PAPA**”), which would have expired during the period from 18 March 2020 to 31 August 2020, shall be extended to 31 December 2020.

Section 2(a) of the PAPA currently provides that any action etc. commenced in Malaysia against “*any person for any Act done in pursuance or execution or intended execution of any written law or of any public duty or authority in respect of any neglect or default in the execution of any such written law, duty or authority shall not be instituted unless it is commenced within 36 months after the Act, neglect or default complained of (or in the case of a continuance of injury or damage)*”.

Noteworthy:

The effect of this proposed amendment is to provide an extension for parties who intend to commence an action etc. against public authorities under PAPA until 31 December 2020.

5. Greater Protection on Indebtedness under the Insolvency Act 1967

Section 20 of the COVID-19 Bill sets out that a creditor or creditors shall not be entitled to present a bankruptcy petition against a debtor under Section 20 or 5 of the Insolvency Act 1967 (“**Insolvency Act**”), unless the debt or the aggregate amount of debts owing to the creditor or the several petitioning creditors, amounts to RM 100,000.00. Currently, the amount of indebtedness required prior to presenting a bankruptcy petition is RM 50,000.00.

Section 21 is a saving provision that deals with proceedings in relation to the Insolvency Act which has commenced. This section provides that any bankruptcy proceedings or actions which are still pending immediately before the publication of the COVID-19 Act shall be dealt with as if the Insolvency Act had not been modified.

Noteworthy:

Unlike the other parts of the COVID-19 Bill which carries a retrospective effect, Part VII will be deemed to come into operation on the date of publication of the COVID-19 Act (if the Bill is passed) and will continue to remain in operation until 31 August 2021.

However, it is noteworthy that the Minister has the discretion to extend the operation of this Part once before the expiry of the period of operation for no more than 2 years from such date of publication of the COVID-19 Act.

6. Protection Against Repossession under the Hire-Purchase Act 1967

Section 16 of the Hire-Purchase Act 1967 (“**HPA**”) provides for the requirement to give notice to the hirer in the event of a repossession of goods by the owner. Under the Section 23 of the COVID-19 Bill, it is proposed that the owner of the goods comprised in a hire-purchase agreement under Section 16 of the HPA shall not exercise his right to repossess the goods for any default of payment of instalment during the period from 1 April 2020 to 30 September 2020.

Noteworthy:

However, any repossession of goods comprised in a hire-purchase agreement before the date of publication of the COVID-19 Act, shall still be valid. Part VIII of the COVID-19 Bill is proposed to come into operation on 1 April 2020 until 31 December 2020.

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7. Modifications to the Consumer Protection Act 1999

The COVID-19 Bill proposes modifications to the Consumer Protection Act 1999 (“CPA”) in connection with provisions relating to default in instalment payments under a credit sale agreement and the limitation period to bring a claim to the Tribunal for Consumer Claims.

Default in payment of instalments by purchaser

Section 24V of the CPA permits credit facility providers to recover total outstanding amounts payable under a credit sale agreement through legal proceedings where (a) the purchaser has defaulted in payment for two consecutive instalments; and (b) the purchaser has subsequently failed to elect to pay the overdue amounts, make early settlement or terminate the credit sale agreement.

Under the COVID-19 Bill, Section 24V of the CPA is proposed to be modified such that:

- (a) the purchaser may elect to pay the overdue instalments to the credit facility provider within 21 days after receiving the notice by the credit facility provider, without the need to pay any late payment charges to the credit facility provider under Section 24V(2)(a);
- (b) if the purchaser fails to carry out any of the actions under Section 24V(2), the credit facility provider shall not commence any legal proceedings to recover the total outstanding amount payable by the purchaser under the credit sale agreement.

Noteworthy:

The modification above is proposed to come into operation on 18 March 2020 until 31 December 2020, provided that the credit sale agreement was entered into before 18 March 2020 and only if there are no overdue instalment payments by the purchaser prior to 18 March 2020. Further, Section 27 of the COVID-19 Bill provides that this modification will not affect any such legal proceedings which have been commenced between 18 March 2020 and the date of publication of the COVID-19 Act.

Limitation period

Under Section 99(2) of the CPA, the jurisdiction of the Tribunal for Consumer Claims is limited to a claim that is based on a cause of action which accrues within three years of a claim.

Noteworthy:

Section 28 of the COVID-19 Bill proposes that any such period of limitation which has expired during the period of 18 March 2020 to 15 June 2020 shall be extended to 31 December 2020.

8. Warrant of Distress to Exclude Arrears of Rent Owing from 18 March 2020 to 31 August 2020

Section 5(1) of the Distress Act 1951 ("**Distress Act**") is proposed to be modified under the COVID-19 Bill whereby a warrant of distress issued under this Section 5(1) for the recovery of rent due or payable to the landlord by a tenant of any premises, will not include the distraint for arrears of rent owing for the period from 18 March 2020 to 31 August 2020.

Noteworthy:

Such modification will not affect any warrant of distress which is issued before the date of publication of the COVID-19 Act. The modification to the Distress Act is deemed to have come into operation on 18 March 2020 and will continue to remain in operation until 31 December 2020.

9. Modifications to the Housing Development (Control and Licensing) Act 1966

The proposed modifications under the COVID-19 Bill to the Housing Development (Control and Licensing) Act 1966 ("**HDA 1966**") are deemed to have come into operation on 18 March 2020 and shall apply to all agreements for the sale and purchase of housing accommodation in the forms prescribed in Schedules G, H, I and J of the Housing Development (Control and Licensing) Regulations 1989 ("**Schedules**") entered into before 18 March 2020.

Late payment charges

The developer shall not impose any late payment charges where the purchaser fails to pay any instalment for the period from 18 March 2020 to 31 August 2020. Such period may be extended up to 31 December 2020 if the Minister is satisfied that additional time is required by the purchaser.

Delivery of vacant possession and liquidated damages

The developer is required to deliver vacant possession of a housing accommodation to the purchaser within the prescribed period set out in the Schedules, failing which the developer shall pay liquidated damages to the purchaser.

The COVID-19 Bill excludes the period from 18 March 2020 to 31 August 2020 (or an extension period of up to 31 December 2020 if the Minister is satisfied that additional time is required by the developer) from the calculation of the time for delivery of vacant possession of a housing accommodation to the purchaser and the liquidated damages for the failure of the developer to deliver vacant possession of such housing accommodation to the purchaser.

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Where service of notice to take vacant possession has been made by the developer to the purchaser during the period from 18 March 2020 to 31 August 2020 (or an extension period of up to 31 December 2020) but the purchaser is unable to enter into possession of the housing accommodation during this period, the purchaser shall not be deemed to have taken vacant possession of the housing accommodation.

Defect liability period

Under the Schedules, the defect liability period for a housing accommodation is 24 months after the date the purchaser takes vacant possession of a housing accommodation.

The COVID-19 Bill excludes the period from 18 March 2020 to 31 August 2020 (or an extension period of up to 31 December 2020 if the Minister is satisfied that additional time is required by the purchaser) from the calculation of the defect liability period and the time for the developer to carry out works to repair and make good the defect, shrinkages and other faults in a housing accommodation.

Saving provision

Any legal proceedings commenced, or any judgement or award obtained, to recover (i) late payment charges payable by the purchaser; (ii) liquidated damages payable by the developer; or (iii) any other sum, during the period from 18 March 2020 until the date of publication of the COVID-19 Act will not be affected by the modifications introduced by the COVID-19 Act.

However, any late payment charges or liquidated damages that has been paid by the purchaser, or the developer respectively, before the date of publication of the COVID-19 Act, will be deemed to have been validly paid under the HDA 1966 and its regulations, and such payment will not be refundable to the payer.

Limitation Period

Section 16N(2) of the HDA 1966 allows the homebuyer to file a claim with the Tribunal for Homebuyer Claims ("**Tribunal**") not later than 12 months from:

- (a) the date of issuance of the certificate of completion and compliance ("**CCC**") for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later;
- (b) the expiry date of the defects liability period as set out in the sale and purchase agreement; or
- (c) the date of termination of the sale and purchase agreement by either party and such termination occurred before the date of issuance of the CCC for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later.

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Noteworthy:

The COVID-19 Bill has modified this subsection to allow the homebuyer to file a claim with the Tribunal from 4 May 2020 to 31 December 2020 in the event the limitation period of 12 months expires during the period from 18 March 2020 to 9 June 2020.

10. Exclusion of Period for Key Provisions under Industrial Relations Act 1967 and the Private Employment Agencies Act 1981

The COVID-19 Bill proposes that the period from 18 March 2020 to 9 June 2020 be excluded from the calculation of the period under the following provisions of the Industrial Relations Act 1967 (“IRA”) and the Private Employment Agencies Act 1981 (“PEA”):

Provisions	Contents
Section 9(3) of IRA	An employer or a trade union of employers upon whom a claim for recognition has been served shall within 21 days after the service of the claim accord recognition or, if recognition is not accorded, notify the trade union of workmen concerned in writing the grounds of not according recognition.
Section 9(4) of IRA	Where the trade union of workmen concerned receives a notification under section 9(3)(b) or where the employer or trade union of employers concerned fails to comply with section 9(3), the trade union may within 14 days after the receipt of the notification or after 21 days under section 9(3) has lapsed, report the matter in writing to the Director General, failing which the claim for recognition shall be deemed to have been withdrawn.
Section 20(1A) of IRA	The Director General shall not entertain any representation (to be reinstated on grounds of dismissal without just cause and excuse) unless such representations are filed within 60 days of the dismissal.
Section 11 of the PEA	Application for renewal of licence shall be submitted at least 2 months before the expiry date and shall be in such form and manner as may be prescribed by the Minister.

11. Modifications to the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987

The COVID-19 Bill proposes modifications to the Land Public Transport Act 2010 (“LPTA”) and the Commercial Vehicles Licensing Board Act 1987 (“CVLBA”), which will be effective from 1 August 2020 until 31 December 2021.

In essence, the proposed modifications to the LPTA and the CVLBA intend to temporarily allow change of use in relation to public service vehicles, tourism vehicles and goods vehicles during the effective period. The proposed modifications for the two pieces of legislation are summarised as follows:

(a) Land Public Transport Act 2010

	Current Provisions	Modified Provisions
Scope of Authorisation	(i) <u>Section 21</u> : Authorising a licensed operator of a particular class of public service vehicles, to use a public service vehicle or tourism vehicle of any other class (ii) <u>Section 56</u> : Authorising a licensed operator of a particular class of goods vehicles to use a goods vehicle of any other class.	(i) <u>Section 21</u> : Authorising any licensed operator of any public service vehicle or tourism vehicle, to temporarily use the vehicle as a public service vehicle, tourism vehicle or goods vehicle of any other class. (ii) <u>Section 56</u> : Authorising any licensed operator of goods vehicle to temporarily use the vehicle as a public service vehicle, tourism vehicle or goods vehicle of any other class.
Period of authorisation	Up to three months	Up to 12 months
Conditions for Application	N/A	Application for such authorisation must be accompanied with the following: <ul style="list-style-type: none"> (i) information on any changes in technical specification of the vehicle, information on temporary use of the vehicle and any other information as determined by the Director General of Land Public Transport; and (ii) additional insurance coverage.

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(b) **Commercial Vehicles Licensing Board Act 1987¹**

	Current Provisions	Modified Provisions
Scope of Authorisation	(i) <u>Section 23</u> : Authorising the holder of a public service vehicle licence of a particular class to use the authorized vehicle as a public service vehicle of any other class.	(i) <u>Section 23</u> : Authorising a holder of a public service vehicle licence of a particular class to use the vehicle for the purpose of a public service vehicle or goods vehicle of any other class.
	(ii) <u>Section 24</u> : Authorising the holder of a carrier's licence 'C' to use the authorized vehicle for the carriage of goods for hire or reward i.e. carrier's licence 'A'.	(ii) <u>Section 24</u> : Authorising any holder of carrier's licence 'C' or carrier's licence 'A' to temporarily use the vehicles as a public service vehicle, tourism vehicle or goods vehicle of any other class.
Period of authorisation	Up to three months	Up to 12 months
Conditions for Application	N/A	Application for such authorisation must be accompanied with the following: (i) information on any changes in technical specification of the vehicle, information on temporary use of the vehicle and any other information as determined by the Board; and (ii) additional insurance coverage.

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¹ applicable to Sabah, Sarawak and the Federal Territory of Labuan only.

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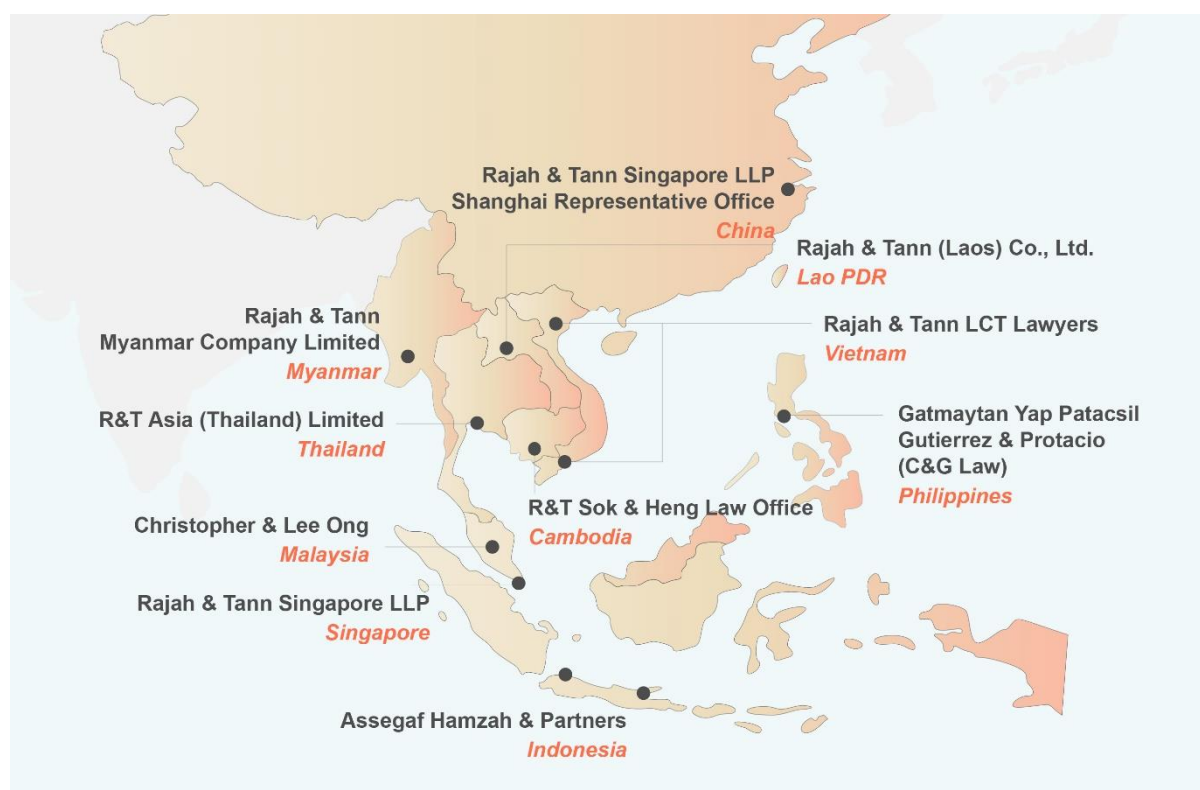
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