

## A Bird's Eye View

# Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 – *Where do I go from here?* (Part 1)

### Introduction

As Malaysia (and the world) continues its combat against this invisible enemy that has plagued the world and crippled economies, the Malaysian Parliament has recently passed the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (“Act”). The Act come into force today, 23 October 2020 (very timely considering the recent spike in COVID-19 cases in Malaysia – a harsh reminder that our battle continues and is likely to continue for the near future).

With the Act coming into force, the question that comes to the forefront of our minds is – ***where do I go from here?*** This publication seeks to give readers a brief overview of the operations of Part I to XI of the Act, in a simple Q&A format.

### Part I – Preliminary

**Question 1:** *What is the underlying objective of the Act? (Let's start with the basics)*

Answer: The answer to this question may be obvious from the title of the Act and is repeated in its Preamble. It is an Act to provide for temporary measures to reduce the impact of COVID-19, including to modify relevant provisions of several statutes.

**Question 2:** *How long will the Act remain in force?*

Answer: For 2 years from 23 October 2020. This is subject to a potential extension by the Prime Minister if it is so required.

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**Question 3: What are the statutes that are modified by the Act?**

Answer: The Act will modify the provisions of 16 statutes in total:

- (1) Limitation Act 1953;
- (2) Sabah Limitation Ordinance [Cap. 72 (1952)];
- (3) Sarawak Limitation Ordinance [Cap. 49 (1985 Ed.)];
- (4) Public Authorities Protection Act 1948;
- (5) Insolvency Act 1967;
- (6) Hire-Purchase Act 1967;
- (7) Consumer Protection Act 1999;
- (8) Distress Act 1951;
- (9) Housing Development (Control and Licensing) Act 1966;
- (10) Industrial Relations Act 1967;
- (11) Private Employment Agencies Act 1981;
- (12) Land Public Transport Act 2010;
- (13) Commercial Vehicles Licensing Board Act 1987;
- (14) Courts of Judicature Act 1964;
- (15) Subordinate Courts Act 1948; and
- (16) Subordinate Courts Rules Act 1955.

**Question 4: In the event of an inconsistency between the Act and provisions of the statutes modified, which will prevail?**

Answer: The “strength” of the Act is further buttressed by section 3 which provides that the provisions of the Act shall prevail over any conflict or inconsistency in the provisions of the statutes modified.

**Question 5: Considering that the Act provides for modification of statutes, do all the modifications of the respective statutes take effect on the same date and last for the same period?**

Answer: No, the Act is broken down into 19 Parts. With the exception of Part I (Preliminary), Part II (Inability to Perform Contractual Obligation) and Part XIX (Miscellaneous), the other Parts of the Act deal with a specific statute.

**Most of the Parts of the Act apply retrospectively.** For ease of reference, the commencement date of the modifications are as follows:

Part	Subject	Commencement of Modification
II	Inability to Perform Contractual Obligation	18 March 2020 – 31 December 2020
III	Modifications to the Limitation Act 1953	18 March 2020 – 31 December 2020
IV	Modifications to the Sabah Limitation Ordinance	18 March 2020 – 31 December 2020
V	Modifications to the Sarawak Limitation Ordinance	18 March 2020 – 31 December 2020
VI	Modifications to the Public Authorities Protection Act 1948	18 March 2020 – 31 December 2020
VII	Modifications to the Insolvency Act 1967	23 October 2020 – 31 August 2021
VIII	Modifications to the Hire-Purchase Act 1967	1 April 2020 – 31 December 2020
IX	Modifications to the Consumer Protection Act 1999	18 March 2020 – 31 December 2020
X	Modifications to the Distress Act 1951	18 March 2020 – 31 December 2020
XI	Modifications to the Housing Development (Control and Licensing) Act 1966	18 March 2020
XII	Modifications to the Industrial Relations Act 1967	18 March 2020
XIII	Modifications to the Private Employment Agencies Act 1981	18 March 2020
XIV	Modifications to the Land Public Transport Act 2010	1 August 2020 – 31 December 2021
XV	Modifications to the Commercial Vehicles Licensing Board Act 1987	1 August 2020 – 31 December 2021
XVI	Modifications to the Courts of Judicature Act 1964	18 March 2020
XVII	Modifications to the Subordinate Courts Act 1948	18 March 2020
XVIII	Modifications to the Subordinate Courts Rules Act 1955	18 March 2020

Readers should be aware that the periods in which the modification to the relevant statutes take effect (as stated above) may be extended.

## Part II – Inability to Perform Contractual Obligation

### **Question 6: *Apart from modification of the Statutes Modified, are there any other rights affected by the coming into force of the Act?***

Answer: Yes, the Act affects the contractual rights of parties. In the event a party is unable to perform a contractual obligation, the aggrieved party shall not have the right to bring an action for said failure of performance, subject to several provisos:

- (1) The contract in question must fall under one of the categories of contracts specified in the Schedule of Part II of the Act; and
- (2) It must be due to the measures made or taken under the Prevention and Control of Infectious Diseases Act 1988.

The Act further provides that any disputes pertaining to a category of contract that falls under the Schedule of Part II of the Act may be settled by way of mediation. In the event a settlement is achieved, parties shall then enter into a written settlement agreement, signed by the disputing parties, and an authenticated copy shall be furnished to the disputing parties.

### **Question 7: *What are the categories of contracts affected?***

Answer: Schedule to Part II of the Act provides the categories of contracts:

- (1) Construction work contracts or construction consultancy contracts and any other contract related to the supply of construction material, equipment or workers in connection with a construction contract;
- (2) Performance bond or equivalent granted pursuant to a construction contract or supply contract;
- (3) Professional services contracts;
- (4) Lease or tenancy of non-residential immovable property;
- (5) Event contract for the provision of any venue, accommodation, amenity, transport, entertainment, catering or other goods or services including, for any business meeting, incentive travel, conference, exhibition, sales event, concert, show, wedding, party or other social gathering or sporting event, for the participants, attendees, guests, patrons or spectators of such gathering or event;
- (6) Contracts by a tourism enterprise; and
- (7) Religious pilgrimage-related contracts.

**Question 8: *Bearing in mind the retrospective effect of the Act, what happens to a contract that I terminated post-18 March 2020 but before the gazette of the Act?***

Answer: The Act provides for a saving provision which states that any contract terminated or any legal proceedings initiated shall be deemed validly terminated or commenced.

### **Part III, IV and V – Statutes of Limitation<sup>1</sup>**

**Question 9: *Considering that I now cannot enforce a contractual right (due to Part II of the Act), what happens to my right to claim if I am time-barred before 31 December 2020?***

Answer: Causes of action for which the limitation period expires between 18 March 2020 and 31 August 2020 shall be extended to 31 December 2020. For instance, the limitation period of 6 years for claims in contract and tort (which falls within 18 March 2020 to 31 August 2020) shall be automatically extended 31 December 2020.<sup>2</sup>

### **Part VI – Modification to the Public Authorities Protection Act 1948 (“PAPA”)**

**Question 10: *Does the automatic extension apply to claims against public authorities?***

Answer: For those familiar with the PAPA, it provides for a shorter limitation period when bringing a claim against a public authority – 36 months.

Similar to the automatic extensions in the statutes of limitation affecting Peninsular Malaysia and East Malaysia, there is also an automatic extension of time for claims against public authorities. Where the limitation for such claims would previously have expired between 18 March 2020 and 31 August 2020, the limitation will now be extended to 31 December 2020.

### **Part VII – Modification to the Insolvency Act 1967**

**Question 11: *Can I commence bankruptcy proceedings during the subsistence of the Act?***

Answer: From 23 October 2020 until 31 August 2021, a creditor shall not be entitled to present a bankruptcy petition against a debtor, unless the amount of indebtedness amounts to RM100,000. Any proceedings which are pending before the publication of the Act shall continue as if Part VII of the Act has not modified the Insolvency Act 1967.

<sup>1</sup> Part III, IV and V shall be addressed together concerning they relate to the same subject matter i.e. the limitation period

<sup>2</sup> Kindly be advised that the Act provides for specific provision in the Limitation Act 1953, Sabah Limitation Ordinance and Sarawak Limitation Ordinance which the automatic extension of the limitation period applies.

## **Part VIII – Modification to the Hire-Purchase Act 1967**

### ***Question 12: Can an owner of goods committed to a hire-purchase agreement repossess said goods during the subsistence of the Act?***

**Answer:** No owner shall exercise a right to repossess goods being the subject matter of a hire-purchase agreement for any default of payment of instalment during the period of 1 April 2020 to 30 September 2020.

Any owner who has exercised his power of repossessing goods being the subject matter of a hire-purchase agreement before 23 October 2020, shall be deemed to have validly exercised said power.

## **Part IX – Modification to the Consumer Protection Act 1999**

### ***Question 13: What are the effects of the Act on credit sale transactions?***

**Answer:** Pursuant to the amendment of Section 24v of the Consumer Protection Act 1999, upon a purchaser's default in payments and consequent receipt of notice from a credit facility provider, notwithstanding the failure of the purchaser to make an election, within 21 days of receiving said notice from the credit facility provider, to either:

- (1) Pay the overdue instalments;
- (2) Make an early settlement of the credit sale agreement; or
- (3) Terminate the credit sale agreement

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. However, this modification is only applicable:

- (1) If the credit sale agreement was entered into before 18 March 2020; and
- (2) If the purchaser has no overdue instalments before 18 March 2020.

## **Part X – Modification to the Distress Act 1951**

### ***Question 14: Can my landlord issue a warrant of distress for the recovery of rent due during the subsistence of the Act?***

**Answer:** For the purposes of recovery of rent due or payable to the landlord, a warrant of distress issued shall not include the distraint for the arrears of rent for the period from 18 March 2020 to 31 August 2020.

## **Part XI – Modification to the Housing Development (Control and Licensing) Act 1966**

### ***Question 15: How does the Act affect homebuyers and developers?***

**Answer:** Homebuyers and developers may breathe a sigh of relief as the provisions of the Act provides several safeguards for both parties respectively.

#### Homebuyers

- (1) No imposition of late payment charges for the period from 18 March 2020 to 31 August 2020 in respect of unpaid instalments;
- (2) The period from 18 March 2020 to 31 August 2020 shall be excluded from the calculation of:
  - a. The defect liability period after the date the purchaser takes vacant possession;
  - b. The time for the developer to carry out works to repair and make good the defect, shrinkages and other faults
- (3) If the purchaser is unable to enter into possession of occupation of a housing accommodation from the date of service of a notice to take vacant possession from the developer during the period of 18 March 2020 to 31 August 2020, the purchaser shall not be deemed to have taken such vacant possession.

\*Note – the Purchaser may make an application to the Minister of Housing and Local Government for an extension exceeding 31 August 2020 and if successful, the Minister of Housing and Local Government shall by a written direction to the developer extend said period up to 31 December 2020.

**Question 15: How does the Act affect homebuyers and developers? (cont')**

Answer: Developers

- (1) The period from 18 March 2020 to 31 August 2020 shall be excluded from the calculation of:
  - a. The time for delivery of vacant possession;
  - b. Liquidated damages for the failure of the developer to deliver vacant possession

\*Note – the Developer may make an application to the Minister for an extension exceeding 31 August 2020 and if successful, the Minister shall by a written direction grant the developer an extension up to 31 December 2020 to deliver vacant possession.

*For any enquires on the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020, please contact **Bahari Yeow** ([bahari@ganlaw.my](mailto:bahari@ganlaw.my)).*