

# THE MALAYSIAN COVID BILL

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# CLIENT ALERT: THE MALAYSIAN COVID BILL



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The long-awaited COVID-19 Bill was finally tabled in Parliament for its First Reading Wednesday, 12 August 2020. Cited as the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 ("the Bill"), it proposes 59 provisions which seek to address the various issues faced by contracting parties in multiple industries. In its form, it seeks to amend 16 legislations to achieve the desired effect.

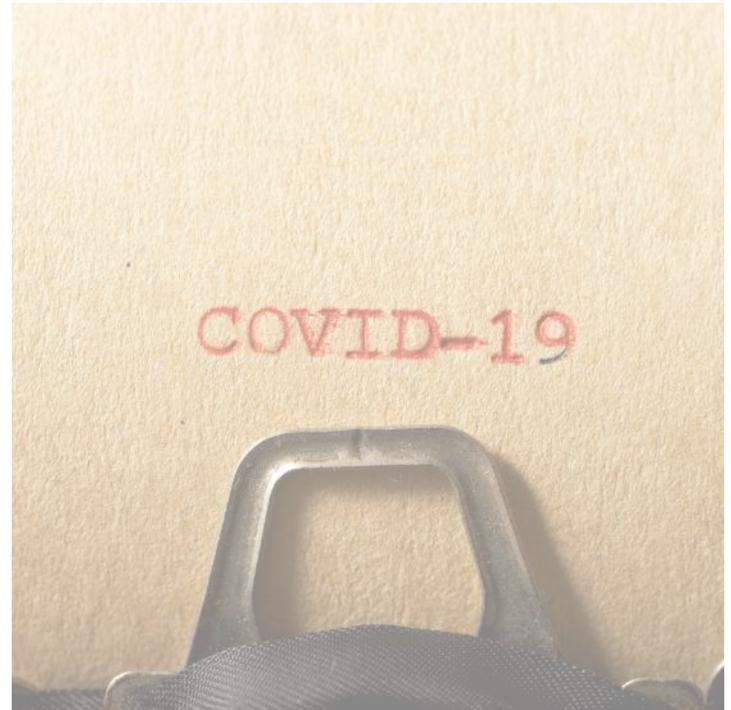
## 1. ISSUES ADDRESSED IN THE BILL

The key feature of the Bill is its attempt to resolve one of the biggest issues faced by contracting parties arising from the COVID-19 pandemic, which is the inability to perform a contractual obligation. The measures taken by the Government under the Movement Control Order on 18 March 2020 (and its subsequent extensions) to curb the spread of the disease has made it difficult for contractual obligations to be fulfilled during this period. This creates serious problems for parties who are governed by the four corners of their respective contracts.

### A. INABILITY TO PERFORM CONTRACT

Section 7 of the Bill affords interim protection to parties affected by the current circumstances. Essentially, what it does is that it restricts a party from exercising his rights under a contract as against the counterparty who is unable to perform his part of the bargain. There is a Schedule which is cross-referenced to Section 7 of the Bill, which lists the categories of contracts which comes within the ambit of protection. The list is as follows:

1. 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
2. Performance bond or equivalent that is granted pursuant to a construction contract or supply contract
3. Professional services contract
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. Contract by a tourism enterprise as defined under the Tourism Industry Act 1992 and a contract for the promotion of tourism in Malaysia
7. Religious pilgrimage-related contract



The scope of contracts is fairly wide and the Minister may even amend the Schedule, by Order published in the Gazette. This could mean enlarging the list or decreasing it. What is not clear from the drafting, however, is whether the protective measure is temporary in nature or will apply for an indefinite period, ie: whether it extinguishes or suspends those rights sought to be enforced. We believe the intent is the former but perhaps the drafting can be made clearer in this regard. Additionally, it is also unclear on the status of contracts which have been "actioned" partially. For instance, can a suit be filed if the contract had been terminated prior to or during the applicable period or whether the restrictions would apply to appeals as well.

The Bill also suggests that disputes between parties be resolved by way of mediation rather than litigation.

Unfortunately, the protection does not extend to the following:

- contracts which have been terminated
- deposits or performance bonds which have been forfeited
- damages which have been paid
- legal proceedings, arbitration or mediation that have commenced
- any judgment or award that had been granted or executed

for the period from 18 March 2020 until the date of publication of the Bill.

This unfortunate circumstance means that contracts which have already been "actioned" upon would not fall within the protective measures under this Bill and it is likely that parties may, in a rush to avoid the consequences of this Bill, swiftly enforce their rights or commence legal action within the next few days or weeks ahead.

## **B. MODIFICATION OF EXISTING LEGISLATION**

The Bill also proposes to amend 16 existing legislations. In a nutshell, the Bill:

(a) extends the applicability of limitation periods which fall within 18 March 2020 and 31 August 2020 to 31 December 2020

(b) increases the threshold of indebtedness to RM100,000 for the commencement of insolvency actions

(c) does not permit repossession of goods under hire purchase for defaults occurring during 1 April to 30 September 2020

(d) restrains a credit provider for commencing legal action for transactions that fall under the purview of Consumer Protection Act until after 31 December 2020. Limitation periods under the Consumer Protection Act which expire between 18 March and 15 June are also extended to the end of 2020

(e) does not allow distress proceedings to distrain arrears of rent due for the period 18 March to 31 August 2020

(f) removes the need for late payment charges for purchasers of property who fail to pay their instalments under the Housing Development (Control and Licensing) Act 18 March to 31 August. For developers, the time for delivery of vacant possession, the calculation of liquidated damages or LADs and the rectification period for defects that fall within 18 March to 31 August 2020 will also be extended accordingly.

(g) removes the period from 18 March to 9 June 2020 for the calculation of according recognition or to notify trade unions of workmen, to make a report to the DG of Industrial Relations and for the filing of representation for reinstatement under the Industrial Relations Act. The same period is also applied in the calculation of licence renewals under the Private Employment Agencies Act.

(h) allows licensed operators of public service vehicles, tourism vehicles, goods vehicle and/or licence "C" or "A" vehicles to apply to change or add on their classification of vehicles for a period of 12 months instead of 3 months previously (under the Land Public Transport Act or Commercial Vehicles Licensing Board Act)

(i) empowers the Chief Justice to issue such directions relating to the business and the rules of the Courts to fit the circumstances as deemed necessary.

*"does not permit repossession of goods under hire purchase for defaults occurring during 1 April to 30 September 2020"*



We set out below a summary of these amendments:

*\*Proposed amendments marked with an asterisk (\*) will not have retrospective application*

| LEGISLATION                            | AFFECTED PROVISION  | REVISED PROVISION   |
|--|---|---|
| LIMITATION ACT 1953                    | Section 6   | Limitation periods which expire within 18 March 2020 to 31 August 2020 are extended to 31 December 2020 |
| SABAH LIMITATION ORDINANCE             | paragraphs 10 to 33, paragraphs 35 to 79, paragraphs 83 to 88, paragraphs 90 to 95 paragraphs 98, 100, 106, 107, 111 and 113 in the Schedule.   | Limitation periods which expire within 18 March 2020 to 31 August 2020 are extended to 31 December 2020 |
| SARAWAK LIMITATION ORDINANCE           | paragraphs 1 to 4, subparagraph 5(a), paragraphs 8 to 29, paragraphs 31 and 32, paragraphs 34 to 78, paragraphs 82 to 94 and paragraphs 96, 98, 100, 106, 107, 111 and 113 in the Schedule. | Limitation periods which expire within 18 March 2020 to 31 August 2020 are extended to 31 December 2020 |
| PUBLIC AUTHORITIES PROTECTION ACT 1948 | Section 2(a)  | Limitation periods which expire within 18 March 2020 to 31 August 2020 are extended to 31 December 2020 |

| LEGISLATION                         | AFFECTED PROVISION | REVISED PROVISION   |
|-------------------------------------|--------------------|---|
| *THE INSOLVENCY ACT<br>1967         | Section 2(o) & 5   | The debt threshold owing to a creditor has been increased from RM60,000 to RM100,000.<br>Effective from the date of publication until 31 August 2021.   |
| *HIRE-PURCHASE ACT<br>1967          | Section 16         | Any default of payment of instalment of goods in a hire-purchase agreement within the period from 1 April 2020 to 30 September does not give the owner the right to take possession of the goods.<br><br>Effective from 1 April 2020 to 31 December 2020.   |
| *CONSUMER<br>PROTECTION ACT<br>1999 | Section 24v        | A credit facility provider cannot take any legal action to recover any amount due under a credit sale agreement.<br><br>Effective until 31 December 2020.<br><br>Only applies to any credit sale agreements entered into before 18 March 2020 and the purchaser must not have any overdue instalments prior to such date. |
|                                     | Section 99         | Limitation periods which expire within 18 March 2020 to 15 June 2020 are extended to 31 December 2020   |

| LEGISLATION   | AFFECTED PROVISION  | REVISED PROVISION   |
|---|---|---|
| *DISTRESS ACT 1951                                    | Section 5(1)  | Warrant of distress issued by the landlord to a tenant for recovery of rent due shall not include the arrears within the period from 18 March 2020 to 31 August 2020.   |
| *HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966 | Forms prescribed in Schedules G, H, I and J of the Housing Development (Control and Licensing) Regulations 1989 | No late payment charges shall be imposed on any purchaser who fails to pay any instalment within the period from 18 March 2020 to 31 August 2020 with the option for an extension up to 31 December 2020.   |
|   |   | The period between 18 March 2020 to 31 August 2020, with the option for an extension up to 31 December 2020, will not be included in the calculation of : <ul style="list-style-type: none"> <li>a) Time for delivery of vacant possession of a housing accommodation; and</li> <li>b) The Liquidated Damages for the failure of the developer to deliver vacant possession of a housing accommodation.</li> </ul>                                    |
|   |   | The period between 18 March 2020 to 31 August 2020, with the option for an extension up to 31 December 2020, is not included in the calculation of : <ul style="list-style-type: none"> <li>a) The defect liability period after the date the purchaser takes vacant possession; and</li> <li>b) The time for the developer to carry out works to repair and make good the defect, shrinkages and other faults in a housing accommodation.</li> </ul> |

| LEGISLATION                   | AFFECTED PROVISION | REVISED PROVISION  |
|-------------------------------|--------------------|--|
|                               | Section 16N(2)     | Homebuyers are entitled to file a claim from 4 May 2020 to 31 December 2020 if the limitation period for the homebuyer to file a claim has expired within the period of 18 March 2020 to 9 June 2020.  |
| INDUSTRIAL RELATIONS ACT 1967 | Section 9(3)       | The period of 18 March 2020 to 9 June 2020 is not included in the calculation of the period to accord recognition or to notify the trade unions of workmen the grounds for not according recognition.  |
|                               | Section 9(4)       | The period of 18 March 2020 to 9 June 2020 is not included in the calculation of the period in the calculation for the making of a report in writing to the Director General for Industrial Relations. |
|                               | Section 20(1A)     | The Period of 18 March 2020 to 9 June 2020 is not included in the calculation of the period for the filing of representation for reinstatement.  |

| LEGISLATION   | AFFECTED PROVISION   | REVISED PROVISION   |
|---|----------------------|---|
| <p>PRIVATE<br/>EMPLOYMENT<br/>AGENCIES ACT 1981</p> | <p>Section 11(1)</p> | <p>Period of 18 March 2020 to 9 June 2020 is not included from the calculation of the period to apply for a renewal of licence.</p>   |
| <p>LAND PUBLIC<br/>TRANSPORT ACT 2010</p>           | <p>Section 21</p>    | <p>A licensed operator of a public service vehicle or tourism vehicle can be authorised to use its vehicles also for the purpose of a goods vehicle or any other class for a period not exceeding 12 months compared to 3 months previously.</p>  |
|   |                      | <p>The application above shall be accompanied with:</p> <ul style="list-style-type: none"> <li>a) 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</li> <li>b) additional insurance coverage for the vehicle.</li> </ul> <p>Effective from 1 August 2020 until 31 December 2021.</p> |
|   | <p>Section 56</p>    | <p>A licensed operator of a goods vehicle can also be authorised to use its vehicle for the purpose of a public service vehicle or tourism vehicle or any other class for a period not exceeding 12 months compared to 3 months previously.</p>   |

| LEGISLATION | AFFECTED PROVISION | REVISED PROVISION |
|-------------|--------------------|-------------------|
|-------------|--------------------|-------------------|

|  |  |   |
|--|--|---|
|  |  | <p>The application above shall be accompanied with:</p> <ul style="list-style-type: none"> <li>a) 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</li> <li>b) additional insurance coverage for the vehicle.</li> </ul> <p>Effective from 1 August 2020 until 31 December 2021.</p> |
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|---|-------------------|--|
| <p>COMMERCIAL<br/>VEHICLES LICENSING<br/>BOARD ACT 1987</p> | <p>Section 23</p> | <p>A holder of a public service vehicle licence of a particular class can be authorised to use its vehicle for the purpose of a goods vehicle or any other class for a period not exceeding 12 months compared to 3 months previously.</p> |
|---|-------------------|--|

|  |  |   |
|--|--|---|
|  |  | <p>The application above shall be accompanied with:</p> <ul style="list-style-type: none"> <li>a) 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</li> <li>b) additional insurance coverage for the vehicle.</li> </ul> <p>Effective from 1 August 2020 until 31 December 2021.</p> |
|--|--|---|

|  |                   |  |
|--|-------------------|--|
|  | <p>Section 24</p> | <p>A holder of a carrier's licence 'C' vehicle or 'A' vehicle can be authorised to use its vehicle for the purpose of a public service vehicle or goods vehicle or any other class for a period not exceeding 12 months compared to 3 months previously.</p> |
|--|-------------------|--|

| LEGISLATION                          | AFFECTED PROVISION | REVISED PROVISION   |
|--------------------------------------|--------------------|---|
|                                      |                    | <p>The application above shall be accompanied with:</p> <ul style="list-style-type: none"> <li>a) 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</li> <li>b) additional insurance coverage for the vehicle.</li> </ul> <p>Effective from 1 August 2020 until 31 December 2021.</p>   |
| <p>COURTS OF JUDICATURE ACT 1964</p> | <p>Section 16A</p> | <p>An addition of a new provision after Section 16 that proposes that the Chief Justice is empowered to issue such directions relating to the business of the Court in the interest of the dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so.</p> <p>Effective from 18 March 2020 until two years from the date of publication.</p>   |
|                                      | <p>Section 17</p>  | <p>An addition of a new provision after Section 17(3) that proposes that the Chief Justice is empowered to provide an alternative arrangement for a meeting if it is impossible to be conducted; and</p> <p>An addition of a new provision after Section 17(7) that proposes that the Chief Justice is empowered to modify any provision of the rules of court or suspend the application of such rules of court if necessary in the interest of the dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so.</p> <p>Effective from 18 March 2020 until two years from the date of publication.</p> |
|                                      | <p>Section 17A</p> | <p>The requirement for the Chief Justice to convene a Council of all the Judges at least once a year is deleted.</p> <p>Effective from 18 March 2020 until two years from the date of publication.</p>  |

| LEGISLATION                       | AFFECTED PROVISION | REVISED PROVISION   |
|-----------------------------------|--------------------|---|
| SUBORDINATE COURTS ACT 19484      | Section 3          | <p>An addition of a new provision after Section 3 that proposes that the Chief Justice is empowered to issue such directions relating to the business of the Subordinate Courts in the interest of the dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so.</p> <p>Effective from 18 March 2020 until two years from the date of publication.</p>                                     |
| SUBORDINATE COURTS RULES ACT 1955 | Section 3          | <p>An addition of a new provision after Section 3(6) that proposes that the Chief Justice is empowered to modify any provision of the rules of court or suspend the application of such rules of court if necessary in the interest of the dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so.</p> <p>Effective from 18 March 2020 until two years from the date of publication.</p> |

## 2. WHAT HAPPENS NEXT?

The Bill will have to go through a Second and Third reading where the contents of the Bill will be discussed and debated. When the Bill is approved by a simple majority, then it will be forwarded to Dewan Negara where only amendments can be proposed. Once no objections are made by Dewan Negara, it will be passed to the Yang di-Dipertuan Agong for Royal Assent. The law will finally come into force when it is published in the Federal Gazette.

The Bill will have to be passed before the conclusion of the sitting of The House of Representatives on 27 August 2020, failing which we will have to wait for the next round of sittings in November.

We had been advocating a Covid Bill since the beginning of the MCO (refer to earlier posts). No doubt, there have been some delays and there are some shortfalls in the drafting and scope of the present Bill. However, we note that the Bill provides for Ministerial Orders, which be relied upon to address some of these issues.

Both the Government and the Opposition should take this opportunity to seriously consider the enactment of this Bill and to put their differences aside to enable businesses some badly needed breathing space. This a time for bipartisanship.

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