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6 Key Takeaways from the COVID-19 Act

On 23 October 2020, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (**Act**) came into force. This update touches on six key takeaways from the Act.

#1 Enforcement of the Act

The Act takes effect from the date of publication (23 October 2020), and shall continue to remain in operation for two years. This is, however, subject to the date of commencement and period of operation provided in the respective Parts of the Act.¹ The lifespan of the Act may be extended by the Prime Minister and the extension may be made more than once.²

#2 The Act to prevail in event of inconsistency

In the event of any conflict or inconsistency between the provisions of the Act and any other written law, the provisions of the Act shall prevail and the conflicting or inconsistent provisions of such other written law shall be deemed to be superseded to the extent of the conflict or inconsistency.³

#3 Inability to perform contractual obligations

Section 7 of the Act provides relief to a party who could not perform any contractual obligation arising from any of the seven categories of contracts specified in the Schedule due to the measures prescribed, made or taken under the Prevention and Control of Infectious Diseases Act 1988 to control or prevent the spread of COVID-19. In this circumstance, the other party is prevented from exercising his rights under the contract.

¹ Section 1(2)
² Section 1(3)
³ Section 3

The seven categories of contracts specified in the Schedule are:

- i. 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.
- ii. Performance bond or equivalent granted pursuant to a construction contract or supply contract.
- iii. Professional services contract.
- iv. Lease or tenancy of non-residential immovable property.
- v. Event contract for provision of any venue, accommodation, transport, catering or other goods or services including for any business meeting, incentive travel, conference, concert, wedding, party or other social gathering or sporting event.
- vi. Contract by a tourism enterprise and a contract for promotion of tourism.
- vii. Religious pilgrimage-related contract.

In this regard, as much as the Act requires a causal link between the inability to perform a contractual obligation and the COVID-19 pandemic, it is worth noting that the extent of the cause that needs to be proven to allow a party to invoke such relief is not clearly specified in the Act.

Following that, s 9 provides that any dispute arising from a party's inability to perform any contractual obligation arising from any of the categories of contracts specified in the Schedule *may* be settled by way of mediation. This means that the option remains with the parties whether to resolve the dispute in court or by way of mediation — the parties are not compelled to mediate.

This Part of the Act applies retrospectively, from 18 March 2020 until 31 December 2020.⁴ The operation of this Part may be extended by the Minister before the expiry of operation period, for more than once, as long as the extension does not exceed the lifespan of the Act.

Having said that, if an action in this regard has been taken any time during the period from 18 March 2020 until 23 October 2020 (for instance, any contract terminated, any deposit forfeited, any damages received, any legal proceedings commenced, or any judgment obtained), the action is deemed to be valid.

#4 Modifications to Limitation Act 1953

Any limitation period specified in s 6 of the Limitation Act 1953 which expires during the period from 18 March 2020 to 31 August 2020 shall be extended to 31 December 2020.

#5 Greater protection on Indebtedness under the Insolvency Act 1967

The Act increased the minimum threshold for commencing bankruptcy proceedings from RM50,000 to RM100,000. Section 20 prohibits a creditor from presenting a bankruptcy petition against a debtor under s 20 or 5 of the Insolvency Act 1967, unless the debt or the aggregate amount of debts owing to the creditor or the several petitioning creditors, amounts to RM100,000.

Unlike the other Parts of the Act, this is the only Part of the Act that does not carry a retrospective effect. This Part comes into operation on the date of publication of the Act and remains in operation until 31 August 2021. However, the operation period may be extended by the Minister before expiry of the operation period, for more than once, as long as the extension does not exceed the lifespan of the Act.

Further, the Act contains a saving provision that deals with bankruptcy proceedings that have commenced. In particular, any bankruptcy proceedings or actions which are still pending immediately before the publication of the Act shall be dealt with as if the Insolvency Act 1967 had not been modified by the Act.

#6 Modifications to Hire-Purchase Act 1967

The Act prohibits an owner from exercising any power of taking possession of goods comprised in a hire-purchase agreement under s 16 of the Hire-Purchase Act 1967 for any default of payment of instalment during the period from 1 April 2020 to 30 September 2020.

Notwithstanding the foregoing, any owner who has exercised his power of taking possession of goods comprised in a hire-purchase agreement under s 16 of the Hire-Purchase Act 1967, before the date of publication of the Act, shall be deemed to have validly exercised such power of taking possession of such goods as if the Hire-Purchase Act 1967 had not been modified by the Act.

It is to be noted that this Part of the Act is deemed to have come into operation on 1 April 2020 and shall continue to remain in operation until 31 December 2020.

Conclusion

When the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020 (**Bill**) was first tabled before the Dewan Rakyat in August 2020, many questioned whether the Bill provided too little and came too late in the day. It appears that the Act contemplated the lapse of time between the first implementation of the movement control order on 18 March 2020 and the eventual enforcement of the Act. This can be seen when the Act preserves the validity of certain actions that have

commenced and judgments that have been obtained, before the Act comes into force.

October is certainly a critical month for most businesses and enterprises across all industries as the blanket bank loan moratorium came to an end in September 2020. It is hoped that the enforcement of the Act can provide a holistic multi-sector remedy that affords some breathing space to businesses and enterprises.

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