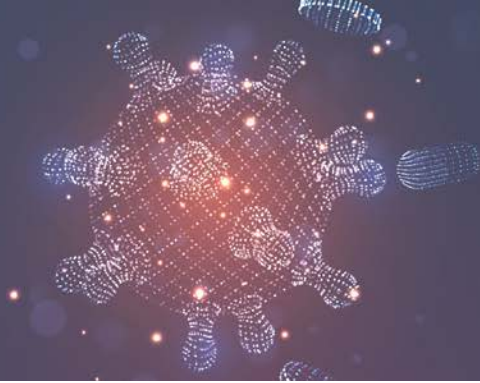


# FAQ: Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Bill 2020 ('the Bill')

for LexisNexis Resource Hub – COVID-19



## What is the objective of the Bill?

The Bill is intended to provide a temporary measure and relief to businesses and individuals in several sectors who were unable to perform their contractual obligations due to the effects of the COVID-19 pandemic. The Bill was passed without amendment by the House of Representatives (Dewan Rakyat) of the Malaysian Parliament on 25 August 2020 and will be presented to the Senate (Dewan Negara).<sup>1</sup>

As a whole, the Bill is meant to protect business and parties who could not perform their contractual obligations as a result of the effect of the Movement Control Order, which lasted from 18 March 2020 to 12 May 2020.

## When will it come into effect and when does it end?

Upon approval, the Bill will be presented for Royal Assent. Thereafter, the Bill will become a law upon its publication in the *Gazette*. It will then remain in operation for a period of two years from the date of publication.<sup>2</sup> However, the Prime Minister may extend the Bill by an order published in the *Gazette*. Orders for extension may be made more than once.<sup>3</sup>

## What types of contracts does it apply to?

Clause 7 of the Bill provides that the inability of any party or parties to perform any contractual obligation arising from any of the categories of contracts specified in the Schedule to Part II of the Bill ('Schedule') due to the measures prescribed, made or taken under the Prevention and Control Infectious Diseases Act 1988 (Act 342) to control or prevent the spread of COVID-19 shall not give rise to the other parties exercising their rights under the contract.

The list of categories of contracts set out in the Schedule are as follows:

- construction work or construction consultancy contracts and any other contract related to the supply of construction material, equipment or workers in connection with a construction contract;

<sup>1</sup> <https://www.parlimen.gov.my/bills-dewan-rakyat.html?uweb=dr&lang=en>, last accessed on 9 September 2020.

<sup>2</sup> Clause 1(2) of the Bill.

<sup>3</sup> Clause 1(3) of the Bill.

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- performance bonds or its equivalent that is granted pursuant to a construction contract or supply contract;
- professional services contracts;
- lease or tenancy of non-residential immovable property;
- event contracts 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;
- contracts by a tourism enterprise as defined under the Tourism Industry Act 1992 and a contract for the promotion of tourism in Malaysia; and
- religious pilgrimage-related contracts.

Notwithstanding the categories above, the Bill confers the Minister<sup>4</sup> (being the Minister (Legal Affairs)) the power to amend the Schedule by order published in the Gazette.<sup>5</sup>

It is important to note that the Bill requires a party's non-performance of a contract to have been caused by 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. As such, not every case of non-performance of the contracts specified in the Schedule will be protected by the Bill. In this regard, one will not be impeded from exercising their contractual rights if the reasons for the non-performance of a contract specified in the Schedule can be shown to have arisen due to reasons which are not caused by the measures taken under the Bill.

### **What happens if there is a dispute?**

Any dispute in respect of any inability of any party or parties to perform any contractual obligation arising from any of the 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 may be resolved by way of mediation.<sup>6</sup>

The Minister (Legal Affairs) is given the power to, *inter alia*, determine the mediation process, including the appointment and role of a mediator, and the conduct of mediation. Upon conclusion of a mediation and the reaching of an agreement by the parties regarding a dispute, the parties are to execute a written settlement agreement which will be binding on the parties.<sup>7</sup>

The Bill provides that notwithstanding clause 7, 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 during the period commencing from 18 March 2020 until

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<sup>4</sup> Clause 6 of the Bill.

<sup>5</sup> Clause 8 of the Bill.

<sup>6</sup> Clause 9(1) of the Bill.

<sup>7</sup> Clauses 9(2) to 9(5) of the Bill.

the date of publication of the Bill, shall be deemed to have been validly terminated, forfeited, received, commenced, granted or carried out.<sup>8</sup>

## **Will the Bill affect the enforcement/implementation of other existing Acts in Malaysia?**

The Bill does impact a number of existing statutes in Malaysia, the key highlights of which are as follows:

### **5.1 Limitation Period**

The Bill provides that any limitation period specified in the provisions mentioned below which expires during the period from 18 March 2020 to 31 August 2020 shall be extended 31 December 2020:

- section 6 of the Limitation Act 1953 (Act 254);<sup>9</sup>
- paragraphs 1 to 4, 5(a), 8, 10 to 33, 35 to 79, 83 to 88, 90 to 95, 98, 100, 106, 107, 111 and 113 in the Schedule to the Sabah Limitation Ordinance (Cap 72);<sup>10</sup>
- paragraphs 1 to 4, 5(a), 8 to 29, 31, 32, 34 to 78, 82 to 94, 96, 98, 100, 106, 107, 111 and 113 in the Schedule to the Sarawak Limitation Ordinance (Cap 49);<sup>11</sup> and
- section 2(a) of the Public Authorities Protection Act 1948 (Act 198).<sup>12</sup>

### **5.2 Insolvency Act 1967 (Act 360)**

The Bill will prohibit a creditor or creditors from presenting a bankruptcy petition against a debtor under sections 2(o) or 5 of the Insolvency Act 1967, unless the debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition the aggregate amount of debts owing to the several petitioning creditors, amounts to RM100,000.00.<sup>13</sup>

### **5.3 Hire-Purchase Act 1967 (Act 212)**

A property owner shall not exercise any power to re-possess goods under a hire-purchase agreement under section 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.<sup>14</sup>

This provision will be deemed to have come into operation on 1 April 2020 and shall continue to remain in operation until 31 December 2020.<sup>15</sup>

### **5.4 Distress Act 1951 (Act 255)**

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<sup>8</sup> Clause 10 of the Bill.

<sup>9</sup> Clause 12 of the Bill.

<sup>10</sup> Clause 14 of the Bill.

<sup>11</sup> Clause 16 of the Bill.

<sup>12</sup> Clause 18 of the Bill.

<sup>13</sup> Clause 20 of the Bill.

<sup>14</sup> Clause 23 of the Bill.

<sup>15</sup> Clause 22(1) of the Bill.

The Bill prohibits a landlord from taking action under section 5(1) of the Distress Act 1951 to recover arrears of rent for the period from 18 March 2020 to 31 August 2020. This provision applies to all types of premises that is the subject of a tenancy agreement.<sup>16</sup>

### 5.5 Housing Development (Control and Licensing) Act 1966 (Act 118)

Clause 34(1) provides that if a purchaser fails to pay any instalment for the period from 18 March 2020 to 31 August 2020 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, the developer is prohibited from imposing any late payment charges in respect of such unpaid instalment on the purchaser.

Notwithstanding the above, the purchaser may apply to the Minister for an extension of the said period and the Minister may direct the developer to extend the period in which the developer is precluded from imposing late payment charges on the purchaser up to 31 December 2020.<sup>17</sup>

In addition, the period between 18 March 2020 to 31 August 2020 is excluded from the calculation of the defect liability period and the time for the developer to carry out works to repair and make good the defects and other faults in a housing accommodation.<sup>18</sup>

The Prime Minister's Department has announced that a Mediation Centre would be established specifically to assist in the resolution of disputes relating to the implementation of the Bill where the following was stated:

*For this purpose, the government has agreed to set aside not less than RM29mil to provide mediation services through the Covid-19 Mediation Centre to the public and companies affected by the pandemic[.]*

<sup>19</sup>

## Conclusion

Whilst the Bill was only passed by the Malaysian Parliament on 25 August 2020, it will have retrospective effect from 18 March 2020 for certain reliefs that are expressly provided for.

The Bill intends to provide some relief for identified businesses and targeted sectors, and provides room for extension of a number of the reliefs afforded beyond December 2020 should the need to do so arise.

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<sup>16</sup> Clause 30 of the Bill.

<sup>17</sup> Clause 32(2) and (3) of the Bill.

<sup>18</sup> Clause 36(1) of the Bill.

<sup>19</sup> <https://www.thestar.com.my/news/nation/2020/08/26/covid-19-bill-gets-green-light>, last accessed on 9 September 2020.

*In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.*

## About the Author

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She is a Recommended Lawyer in the Legal500 2019 Asia Pacific for Dispute Resolution and was named Future Star by Benchmark Litigation Asia Pacific 2019 and 2020. Idza was also named as Outstanding Lawyer 2020 for Client Service Excellence by Asialaw for Dispute Resolution.

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