

客户快讯

September 2020

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

马来西亚 - 2020 年针对降低 2019 新冠肺炎 (COVID-19) 影响的临时措施法案

On 12 August 2020, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020 ("**Bill**") was tabled for and passed the third reading in the Lower House of Parliament.

马来西亚下议院在2020年8月12日审议并通过了第三轮的《2020年降低2019年新冠肺炎 (COVID-19) 影响的临时措施法案》(“**法案**”)。

The Bill provides for temporary measures to reduce the impact of COVID-19 pandemic on businesses and individuals in Malaysia. Once the Bill is enacted into law, the Bill will have retrospective effect from 18 March 2020.

该法案将为马来西亚企业和个人在降低新冠肺炎的影响方面提供一些临时措施。一旦该法案正式被纳入法律条文，将追溯至2020年3月18日起开始生效。

Key Highlights of the Bill

法案要点

1. Relief from Contractual Obligations

免除合同义务

The Bill sets out a list of contracts ("**Scheduled Contracts**") where a party can seek relief due to an inability to discharge its contractual obligations arising from the prescribed measures set out under the Prevention and Control of Infectious Diseases Act 1988 ("**COVID Measures**"). COVID Measures include the Movement Control Order ("**MCO**") event, which required the closure of all business premises save for those providing essential services, and the implementation of the guidelines and SOPs issued by the relevant Ministries on various sectors such as retail and construction.

该法案列出了一份合同清单(“**指定合同**”)，以便合同的一方可以因无法履行马来西亚《1988年预防和控制传染病法》规定措施(“**COVID措施**”)下的相关合同义务而寻求救济。COVID措施包括行动管制令(“**MCO**”)事



件，该 MCO 要求关闭除了提供基本保障服务之外的所有营业场所，以及执行有关部门发布的各行业准则（如零售业和建筑业）和标准操作程序（SOP）。

Scheduled Contracts

指定合同

- (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.

建筑工程合同或建筑咨询合同以及与建筑合同有关的建筑材料，设备或工人的供应有关的任何其他合同。

- (b) Performance bond or equivalent that is granted pursuant to a construction contract or supply contract.

根据建筑合同或供应合同授予的履约保函或同类性质的合同。

- (c) Professional services contract.

专业服务合同。

- (d) Lease or tenancy of non-residential immovable property.

非住宅不动产的租契。

- (e) 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.

为活动的参与者、与会者、来宾、顾客或观众提供任何场地、住宿、便利设施、交通、娱乐、餐饮或其他商品或服务的合同。这些活动包括任何商务会议、奖励旅行、会议、展览、销售活动、音乐会、表演、婚礼、派对或其他社交聚会或体育活动。


- (f) Contract by a tourism enterprise as defined under the Tourism Industry Act 1992 and a contract for the promotion of tourism in Malaysia.

马来西亚《1992年旅游业法》界定的旅游企业签订的合同以及在马来西亚促进旅游业的合同。

- (g) Religious pilgrimage-related contract.

与宗教朝圣有关的合同。

The Bill is drafted widely to provide temporary relief to all obligations under the Scheduled Contracts to be performed for the period commencing 18 March 2020 up to and including 31 December 2020 ("**Relief Period**"). The



Bill temporarily suspends actions for contractual breach, where the non-performance was due to COVID Measures.

该法案的拟定范围广泛，旨在为从 2020 年 3 月 18 日起至 2020 年 12 月 31 日（“救济期”）开始履行指定合同下的所有义务提供临时济助。该法案暂时中止了因 COVID 措施导致不履行合同所造成的违反合同的诉讼。

The contractual rights of a party to the Scheduled Contracts is generally not affected. The Bill simply prohibits a party from exercising its rights during the Relief Period against the non-performing party. For example, the ability to charge interest for non-payment or late payment during the Relief Period is not affected if the right was provided in the Scheduled Contracts, and can therefore be exercised on 1 January 2021 (assuming the Relief Period is not extended). Seeking protection under the Bill may therefore result ultimately, in higher late payment charges.

指定合同中一方的合同权利通常不受影响。该法案只是禁止一方在救济期内对无法履行合同的一方行使其权利。例如，如果指定合同提供了就未付款或逾期付款收取利息的权利，则该权利在救济期内不会受到影响，所以相关利益方可以在 2021 年 1 月 1 日行使其权力（假设救济期未延长）。因此，根据该法案寻求保护的结果可能最终导致更高的逾期付款利息费用。

Disputes may also arise from arguments that a party's inability to perform its contractual obligation is not due to COVID Measures. For example, a landlord may dispute that its tenant's inability to pay rent during the Relief Period is not due to COVID Measures as compliance with the SOPs did not cause the tenant to default on its payments obligations under the tenancy agreement. The Bill provides that such disputes may be settled by way of mediation, with the appointment of a mediator and its role being determined by the Minister of Law.


对于一方无法履行其合同义务是否是由于 COVID 措施引起的，是可能的争议点。例如，业主可能会争辩其租客在救济期内无法支付租金不是由于 COVID 措施造成的，因为遵守标准操作程序并不会导致租客拖欠其在租赁协议下的付款义务。该法案规定可以通过调解解决此类争端。调解员的任命和其角色由司法部部长来决定。

It is to be noted that:

需注意的是：

- (i) loan or facility agreements do not fall within the list of Scheduled Contracts. As such, the Bill does not extend the existing loan moratorium set to expire at the end of September 2020;

贷款或融资协议不在指定合同清单内。因此，该法案并未延长现有的暂停贷款期限。该暂停期限将于 2020 年 9 月底到期；

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- (ii) the Minister of Law is empowered to amend the list of Scheduled Contracts to add (or take away) from the existing list. The Minister may also extend the Relief Period to a date past 31 December 2020; and

司法部部长有权修改（从现有清单中增加或删除）指定合同清单。。该部长还可以将救济期延长至 2020 年 12 月 31 日之后；以及

- (iii) the Bill, when passed will have retrospective effect. However, any contract terminated, deposit or performance bond forfeited, damages received, legal proceedings commenced or judgment or award granted after 18 March 2020 but prior to the date on which the Bill will come into effect ("**Effective Date**"), shall remain valid ("**Saving Provision**"). To take advantage of the Saving Provision, parties may look to enforce their rights under the Scheduled Contracts by terminating them or claiming for damages before the Bill comes into force.

该法案一经通过将具有追溯效力。但是，在 2020 年 3 月 18 日之后而在该法案生效之日（“**生效日期**”）之前任何已终止的合同、没收的押金或履约保函、已收到的损害赔偿、已进行的诉讼程序或判决、或已授予的裁决，均应维持有效（“**保留条文**”）。若要利用“保留条文”，当事方可以通过终止合同或在该法案生效之前要求损害赔偿，来强制执行其在指定合同下的权利。

2. Extension of Limitation Periods

时效期限的延长

Limitation periods (i.e. the period of time within which a party to a contract must bring a claim) for contract and tort under Section 6 of the Limitation Act 1953 which had lapsed during the Relief Period shall be extended to 31 December 2020. This provision has been drafted to also apply to the laws of Sabah and Sarawak.


马来西亚《1953 年时效法》第 6 条规定的合同和侵权行为的时效期（即合同当事方必须提出索赔的期限）如在救济期间已经过期，将会延长至 2020 年 12 月 31 日。该条款拟定后也适用于沙巴州和砂拉越州的法律。

3. Bankruptcy Proceedings

破产程序

Creditor(s) cannot commence bankruptcy proceedings against a debtor under the Insolvency Act 1967, unless the aggregate amount of debts due and owing equals to or exceeds RM100,000 ("**Bankruptcy Threshold**"). This is an increase from the previous threshold of RM50,000. The Bankruptcy Threshold will come into force on the Effective Date and remain in force until 31 August 2021 (unless further extended).

债权人不能根据马来西亚《1967 年破产法》对债务人启动破产程序，除非所欠债务总额等于或超过 RM100,000（“**破产门槛**”）。这比先前的



RM50,000 的门槛要高。破产门槛将于生效日期生效，有效期持续到 2021 年 8 月 31 日（除非进一步延长）。

Bankruptcy and winding up proceedings filed prior to the Effective Date will not be affected. There is a likely possibility that creditors will want to quickly bring claims against debtors before the Bill comes into force.

在生效日期之前提交的破产和清算程序将不受影响。债权人很可能希望在法案生效之前迅速对债务人提出索赔。

4. Relief from Hire Purchase Obligations

免除租购义务

Between the period of 1 April 2020 to 30 September 2020, owners will not be able to exercise their rights to repossess goods under a hire-purchase agreement arising from a default in instalment payments. However, owners who have exercised their rights before the Effective Date may continue to pursue their claims.

在 2020 年 4 月 1 日至 2020 年 9 月 30 日期间，货物主人将无法因分期付款违约而行使其根据租购协议收回货物的权利。然而，在生效日期之前行使权利的货物主人可继续提出索赔。

5. Consumer Protection Act / Credit Sale Agreements

消费者保护法/信贷销售协议

Under the Consumer Protection Act 1999 ("CPA"), where there is a default in payment of two consecutive instalments by a purchaser under a credit sale agreement (i.e. an agreement to purchase goods pursuant to a credit arrangement), the credit facility provider is entitled to issue a notice to address default in such payments ("Notice").

根据马来西亚《1999 年消费者保护法》（“CPA”），如果购买者根据信贷销售协议（例如，根据信贷安排购买商品的协议）未能连续两次分期付款，信贷提供者有权发出通知以处理此类付款的违约行为（“通知”）。

The Bill amends the CPA to give more flexibility to the purchaser to deal with the debt. Specifically:


该法案修改了 CPA，使购买者有更大的伸缩性来处理债务。具体而言：

- (a) Within twenty-one (21) days from receipt of the Notice, the purchaser may elect to:

在收到通知后的二十一（21）天内，购买者可以选择：

- (i) pay the overdue instalments (without any late payment charges as per the current law);

支付逾期的分期付款（根据现行法律不收取任何逾期付款费用）；



(ii) make an early settlement by paying the total amount payable; or
通过支付应付总额提前和解；或

(iii) terminate the credit sale agreement and surrender the purchased goods to the credit facility provider.

终止信贷销售协议，并将购买的货物交还给信贷提供者。

(b) Even where the purchaser fails to elect an option set out in paragraph 5(a) above, the credit facility provider is not allowed to commence any legal proceedings to recover the amounts payable by the purchaser under the credit sale agreement, if:

即使购买者未选择上述第 5(a)中规定的选择权，信贷提供者也不能启动任何法律程序以追回购买者根据信贷销售协议应支付的款项，如果：

(i) the credit sale agreement was entered into before 18 March 2020; and

该信贷销售协议是在 2020 年 3 月 18 日之前签订的；以及

(ii) the purchaser had no overdue instalments before 18 March 2020.

购买者在 2020 年 3 月 18 日之前没有逾期分期付款。

Legal proceedings commenced before the Effective Date will continue to subsist.

在生效日期之前开始的法律程序将继续存在。

(c) If the limitation period under the CPA had expired 18 March 2020 to 15 June 2020, the date shall be extended until 31 December 2020.

如果 CPA 的时效期限已于 2020 年 3 月 18 日至 2020 年 6 月 15 日届满，该日期应延长至 2020 年 12 月 31 日。


6. Recovery of Rent Due and Payable to a Landlord by a Tenant

收回租客应付给业主的租金

Where a tenant fails to pay rent, the Bill restricts the ability of a landlord to apply to the Courts to issue a warrant of distress to seize and sell the tenant's goods in satisfaction for any arrears of rent payable by the tenant for the period between 18 March 2020 to 31 August 2020.

如果租客未能支付租金，该法案限制业主向法院申请扣押和出售租客物品以抵偿租客在 2020 年 3 月 18 日至 2020 年 8 月 31 日期间任何拖欠租金的命令。

This does not however disqualify any warrant of distress already issued before the Effective Date. The provision will provide some relief to tenants as a result of the temporary suspension of the statutory rights of the landlord, particularly given that the list of Scheduled Contracts does not include residential tenancies.



然而，这并不会使在生效日期之前已发出的任何扣押令失效。由于业主的法定权利被暂时中止，这项规定将为租客提供一些救济，特别是考虑到在指定合同清单中不包括住宅租约。

7. Amendments to Housing Development (Control and Licensing) Act 1966 ("HDA")

修改马来西亚《1966 年房屋发展（管制和牌照）法》（"HDA"）

The Bill protects the rights of both purchaser and developer by proposing the following amendments to the HDA:

该法案通过提出以下对 HDA 的修订案来保护购买者和开发商的权利：

- (a) no late payment charges to be imposed on purchasers who fail to make instalment payments for the period 18 March 2020 to 31 August 2020 ("**Prescribed Period**") due to COVID Measures;

如购买者因 COVID 措施而未能在 2020 年 3 月 18 日至 2020 年 8 月 31 日期间（“**规定期限**”）内分期付款，购买者将无需交付逾期付款费用；

- (b) the Prescribed Period shall be excluded from the calculation of:

在计算以下相关时间线时，该规定期限不被计算在内：

- (i) the time for delivery of vacant possession of a housing accommodation;

交付空置房屋的时间；

- (ii) liquidated damages arising for the failure of the developer to deliver vacant possession of a housing accommodation;

因开发商未能交付空置房屋而产生的违约金；

- (iii) the defect liability period after the date the purchaser takes vacant possession of a housing accommodation; and


买方取得空置房屋的日期之后的保修期；和

- (iv) the time for the developer to carry out works to repair and make good the defect, shrinkages and other faults in a housing accommodation;

开发商对房屋内的瑕疵、面积缩水和其他故障进行修复和弥补的时间；

- (c) where the purchaser fails to take delivery of vacant possession of a housing accommodation during the Prescribed Period, the purchaser will not be deemed to have taken vacant possession; and

如果购买者在规定期限内未能取得房屋空置管有权，购买者将不会被视为已占有空置物业；以及

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- (d) if the 12 months limitation period for the homebuyer to file a claim with the Tribunal for Homebuyer Claims has expired during the period between 18 March 2020 to 9 June 2020, the homebuyer is entitled to file the claim from 4 May 2020 to 31 December 2020.

如果购房者向审裁处提出索偿的 12 个月时效期限已于 2020 年 3 月 18 日至 2020 年 6 月 9 日期间届满，购房者有权于 2020 年 5 月 4 日至 2020 年 12 月 31 日期间提出索偿。

The above only applies to the residential properties acquired pursuant to the prescribed sale and purchase agreements set out in Schedules G, H, I and J of the Housing Development Regulations entered into before 18 March 2020.

以上规定仅适用于在 2020 年 3 月 18 日前签订的《房屋发展条例》附表 G、H、I 及 J 下规定的买卖协议所购买的住宅物业。

These provisions provide a welcome relief to and protection to purchasers of housing accommodation. It also protects developers given that construction work had to be stopped during the MCO period.

这些规定为住房购买者提供了令人欣慰的救济和保护。它还会保护开发商，因建设工作必须在 MCO 期间停止。

Note that purchasers and developers can apply to the Minister of Housing and Local Government for an extension of the Prescribed Period to 31 December 2020. It is unclear why the Prescribed Period expires on 31 August, and why the Bill cannot be drafted to extend it to 31 December 2020. Certainty would have been superior compared to the discretionary exercise of ministerial powers.

请注意，购买者和开发商可以向住房和地方政府部长申请延长规定期限至 2020 年 12 月 31 日。目前还不清楚为什么规定期限于 8 月 31 日届满，以及为什么不能拟定该法案将其延长到 2020 年 12 月 31 日。确定性与酌情行使部长权力相比之下，确定性会更重要。

8. Industrial Relations / Private Employment Agencies

劳资关系/私营职业介绍所

The Bill excludes the period between 18 March 2020 to 9 June 2020 from the calculation of the timelines for the:

该法案对以下相关时间线的计算，不包括 2020 年 3 月 18 日至 2020 年 6 月 9 日的期间：

- (i) Industrial Relations Act 1967; and

马来西亚《1967 年劳资关系法》；和

- (ii) Private Employment Agencies Act 1981.

马来西亚《1981 年私营职业介绍所法》。



The exclusion of this period from the timelines below is to address the disadvantages arising from an inability to travel and/or make the relevant applications or filings during the MCO and the Conditional Movement Control Order.

以下时间表中排除此时间线是为了解决在行动管制令和有条件行动管制令期间无法旅行和/或进行相关申请或归档而造成的不利条件。

| (a) Employers 雇主 | |
|--|--|
| Obligation 义务 | Timeline 时间线 |
| Notification of Recognition of a Trade Union / Notification of Reasons for Non-Recognition 工会承认通知/不承认理由的通知 | <i>Within 21 days after service of the claim for recognition from the trade union</i> <i>自工会承认申请送达 后 21 天内</i> |
| (b) Trade Union / Employees 工会/雇员 | |
| Obligation 义务 | Timeline 时间线 |
| Claim for Recognition of a Trade Union / Notification of Failure to Receive the Notification of Recognition 申请承认工会/未收到承认的通知 | <i>Within 14 days from the receipt of the Notification of Recognition <u>or</u> after the 21 day period in (a) has lapsed</i> <i>在收到承认通知后 14 天内或在 (a) 项中的 21 天期限过期后</i> |
| Filing of unfair dismissal claims 提交不公平解雇索赔 | <i>Within 60 days of the dismissal</i> <i>解雇后 60 天内</i> |
| (c) Private Employment Agencies 私营职业介绍所 | |
| Obligation 义务 | Timeline 时间线 |
| Application to renew private employment agency licence 申请更新私营职业介绍所牌照 | <i>2 months before expiry date</i> <i>到期日前 2 个月</i> |



9. Licensed Operators of a Public Service Vehicle / Tourism Vehicle

公共服务车辆/旅游车辆的持照经营者

The Bill amends the Land Public Transport Act 2010 ("LPTA") and the Commercial Vehicles Licensing Board Act 1987. A licensed operator of a public service vehicle (e.g. bus, stage buses, charter buses under the First Schedule of the LPTA) or tourism vehicle (e.g. excursion bus, under the Second Schedule of the LPTA) may make an application to the relevant authority for authorisation to be used as a public service vehicle, tourism vehicle or goods vehicle of another category or class. For example, authorisation may be given for a tourism vehicle to be used for public transportation, subject to the fulfilment of certain conditions which includes additional insurance coverage.

该法案修改了马来西亚《2010年陆地公共交通法》（“LPTA”）和《1987年商用车牌照委员会法》。公共服务车辆（例如LPTA附表1的巴士、短途巴士、包车）或旅游车辆（例如LPTA附表2的游览巴士）的持照经营者可向有关当局提出申请，要求授权用作其他类别或级别的公共服务车辆、旅游车辆或货车。例如，可以授权旅游车辆用于公共交通，但须符合某些条件，其中包括额外的保险。

These amendments give tourism and entertainment operators the ability to generate other means of income by repurposing their existing vehicles.

这些修改案使旅游和娱乐经营者能够通过重新利用其现有车辆来创造其他收入手段。

Conclusion

总结

The scale of the COVID-19 pandemic means that no business has been spared from the fallout. The unprecedented restrictions under the MCO has had a significant impact on economic activity in Malaysia. The stimulus initiatives introduced by the Government have helped but more assistance is required by disrupted businesses to perform their contractual obligations.

The Singaporean COVID-19 (Temporary Measures) Act 2020 was passed in April 2020. It is imperative that the Bill is urgently enacted into law in Malaysia to give businesses the necessary tools for recovery and renewal.

新冠肺炎疫情的大规模流行意味着没有任何企业能幸免于难。前所未有的行动管制令限制对马来西亚的经济活动也产生了重大影响。政府采取的经济振兴计划虽然有所帮助，但受到影响的企业需要更多的援助来履行合同义务。



新加坡已于 2020 年 4 月通过《2020 年 COVID-19（临时措施）法》。因此，旨在为企业复苏和更新提供必要工具的该法案亟待在马来西亚迅速通过并被纳入法律条文。

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