

30 November 2020

## COVID-19 Act 2020: Temporary Reliefs for Developers, Purchasers, Landlords and Tenants



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The Temporary Measures for Reducing the Impact of the Coronavirus Disease 2019 (COVID-19) Act 2020 (COVID-19 Act) has introduced several temporary measures to reduce the impact of COVID-19 for homebuyers, developers, landlords and tenants via modifications to the Housing Development (Control and Licensing) Act 1966 (HDA 1966) and the Distress Act 1951 (DA 1951).

This alert highlights the key modifications and its implications to businesses.

### Modifications to the HDA 1966

- ***Applicable Contracts***

The modifications discussed below are only applicable to sale and purchase agreements in the forms prescribed in Schedule G, H, I and J of the Housing Development (Control and Licensing) Regulations 1989, namely, sale and purchase agreements entered into by housing developers and purchasers for the sale and purchase of housing accommodation on a “*sell then build*” or “*build then sell*” basis.

- ***Late Payment Charges***

A developer may not impose any late payment charges on a purchaser if he/she fails to pay their instalments on time for the period between 18 March 2020 to 31 August 2020 (COVID-Impact Period), even if the sale and purchase agreement states otherwise.

The above applies if the purchaser could not pay their instalments due to measures taken by the Malaysian

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government to curb the spread of COVID-19, such as the movement control orders.

Additionally, a purchaser may apply for an extension of the above-mentioned period (for a period of up to 31 December 2020) from the Minister of Housing and Local Government (Minister). The Minister has a discretion to grant the above if he is “*satisfied that additional time is required by the purchaser*”. Evidently, it is unclear what requirements must the purchaser fulfil before the Minister is “*satisfied*” that additional time is required.

- ***Delivery Of Vacant Possession & Liquidated Ascertained Damages***

Additionally, the period from 18 March 2020 to 31 August 2020 (or an extension period of up to 31 December 2020, if applied for by the developer and granted at the Minister’s discretion) is excluded from the calculation of the time period for:

- (i) The developer to deliver vacant possession of a housing accommodation to the purchaser; and
- (ii) Any liquidated damages if the developer fails to deliver such vacant possession to the purchaser within the deadline in the sale and purchase agreement.

- ***Defect Liability Period***

Additionally, the period from 18 March 2020 to 31 August 2020 (or an extension period of up to 31 December 2020, at the Minister’s discretion) is excluded from the calculation of:

- (i) The defect liability period as stipulated in the agreement after the date of delivery of vacant possession of a housing accommodation to the purchaser; and
- (ii) The period stipulated in the agreement for the developer to carry out works to repair and make good the defect, shrinkages and other faults in a housing accommodation.

- ***Late Payment Charges Incurred Before Commencement Of The COVID-19 Act***

However, any late payment charges paid by the purchaser and liquidated damages paid by the developer before the date of publication of the COVID-19 Act (i.e. 23 October 2020) shall be valid and non-refundable.

### **Modifications to the DA 1951**

- ***Landlord's Recovery Of Rent Arrears***

Generally, the landlord has the right to apply *ex parte* (without the tenant present before the judge) to a judge or registrar for an order for the issue of a warrant of distress for the recovery of rent due and payable to the landlord by a tenant of any premises for a period within 12 completed months of the tenancy.

Under the COVID-19 Act, while a landlord is not may still apply for such warrant of distress, such warrant applied for will exclude the recovery rent arrears of the tenant between 18 March 2020 and 31 August 2020. This applies to all types of premises that are the subject of tenancy agreements (including tenancies of industrial, commercial and residential properties).

### **Conclusion**

The temporary reliefs brought by the COVID-19 Act is a positive development which has the effect of restricting property developers, purchasers and landlords in real estate contracts from invoking their contractual rights against the other party in an unconscionable manner owing to the many financial hardships caused by the COVID-19 pandemic.

However, it is evident that the COVID-19 Act has some shortcomings in that most of its temporary reliefs only apply to the COVID-Impact Period which has expired on 31 August 2020. Any extension of time is not automatic and must be applied for by the developer or the purchaser (as the case may be), and it is unclear as to how the Minister would

consider an application for extension of the COVID-Impact Period.

It would therefore be useful if the Minister prescribes some guidelines or the conditions to be met for an approval of any extension of time applied for by the relevant parties so that applicants are made aware of the requirements to be met, the documents and information to be furnished to the Minister.

For instance, similar legislation in Singapore provides a comprehensive system in relation to rental relief assessors, which covers matters such as the procedure for the submission of documents for rental relief proceedings, qualifications of rental relief assessors, applications and procedures for rental relief assessor's determination, the keeping of records of all determinations, and for the publication of any determinations by the assessors.

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## How can we help you?

You may pose any real estate queries including those in relation to this alert via e-mail or telephone to:

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