

30 April 2020

PRESS STATEMENT

PROPOSED COVID-19 ACT MUST PROTECT BOTH PARTIES TO AN AGREEMENT/CONTRACT

We refer to the call for a Covid-19 Act purportedly to protect businesses and jobs. Whilst we agree that a fair and equitable shield be crafted, there must be adequate provisions that the protection is only applicable to genuine situations and there is no abuse for a 'free-ride' is possible.

This is a very delicate proposal as it is a call for the government to introduce a law to intervene in, essentially, a Private Contract between two contracting parties. Any intervention must be based on equity and be 'win-win' to BOTH the contracting parties.

The proposals articulated in the Press Release by the "Coalition of Malaysia's business communities" is totally one-sided and self-serving without consideration of the contractual rights and financial position and impact of the other contracting party.

We are apprehensive that the proposed concept of the Covid-19 Act promulgated by this "coalition" will be a carte blanche to get out of their contractual obligations without condition nor reasonableness.

We believe that any Covid-19 Act to protect any one contracting against the other should be only applicable if enforcing the contract will cause the weaker party into insolvency or bankruptcy; otherwise under the guise of the protection from the Covid-19 Act, it will encourage frustrating the contract willy-nilly at the detriment to the other party.

The Covid-19 Act as promulgated will immediately inspire all tenants to withhold rents as they are protected from eviction, suppliers to delay supplies if they have a better-priced contract to fulfil etc. Tenants can enjoy a 'free-rent' period and walk-away thereafter. Similarly, suppliers delaying supplies can be extremely detrimental to the buyer's production and business. There are too many loopholes to exploit favouring one party against and detrimental to the other contracting party.

Any envisaged Covid-19 Protection Act MUST protect BOTH parties, be equitable to BOTH parties, and only applicable in extreme insolvency/bankruptcy situations. It is futile to purportedly SAVE one party resulting in the DEATH of the other party.

Records will testify that landlords, over the several past crises, have always extended assistance to our tenants on a principle of "shared-burden" basis, including giving rent rebates, deferment of rents, additional promotional expenses etc. The assistance was structured and tailored for different tenants and category of businesses in accordance to needs and circumstances. Such assistance programmes should be developed on a case by case basis and mall by mall basis. A blanket 'one size fits all' approach is not practical nor will deliver maximum effect and benefits.

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We appreciate the Government's initiative in providing tax relief for rental reductions. However, the condition of a 30% threshold reduction and only applicable to SME tenants have made this not readily available to most tenants. We appeal for these two conditions to be waived. We take this opportunity to clarify to the public that for every RM100 foregone rent, the tax relief is merely RM14 and is a disproportionate burden on the landlord.

We appeal to the Government to take extreme care in considering such a Covid-19 Protection Act and ensure that only genuine cases should be availed of its protection and both the contracting parties must benefit from such protection.

Thank you.