

ASSISTING FRAUD VICTIMS IN TIMES OF COVID-19

Country: Malaysia

1. THE MOST CRITICAL PHASE OF THE CRISIS

As long as measures to prevent the spread of Covid-19 restrict freedom of movement: What are the effects of the Covid-19 crisis on civil justice?

By way of background, Malaysia is currently under a movement control order since 18 March 2020 and which will continue until at least 28 April 2020. This restricts movement of all individuals save for the prescribed essential services such as water, electricity, oil & gas, telecommunications, postal, banking and finance, and health. Legal services and the courts have remained closed during this period (save for the exceptional and urgent criminal law matters).

Court Process and Civil Justice

The courts have been quick to adapt to this period of restricted movement. In terms of filing of court papers, Malaysia had largely already moved to a complete e-filing environment. Court papers continue to be e-filed and processed by the court registrars. Service of court papers have had to be effected through email.

One aspect of civil procedure is that many court applications will require an affirmed affidavit in support. The courts have been flexible in allowing for unaffirmed and unsigned affidavits to be filed with an undertaking for the eventual affirmed affidavit to be filed after the lifting of the restricted movement.

Procedural deadlines for the filing of court papers continue to remain but the courts have been flexible in granting reasonable extensions of time. Issues of limitation under our statute do continue so litigants have to be very conscious of pursuing their claims within the limitation period.

On court hearings, the courts issued a practice direction to allow for urgent civil hearings to proceed by way of online hearings. This is the first time that the courts have had to adapt to this pure online environment and reflects the flexibility of the courts in ensuring the administration of justice. Hearings have been carried out by way of exchange of emails between

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the parties' counsel and judge. Alternatively, by way of the courts' online messaging system called e-Review. There have also been video conference hearings.

I recently conducted an urgent hearing all by way of exchange of emails. I filed the urgent court application and it was immediately registered in the court. The court registrar contacted parties' counsel through mobile phone on the same day. The court registrar sent out an email to all parties at 6pm to fix the hearing at 11am the next morning. Parties were asked to email over any submissions by 9.30am the next morning. I emailed my submissions, in a speech format, at 11pm that same day. The other parties all emailed over their submissions by the cut-off time. At 11am, the Judge emails all parties to state that he has read all the court papers and the emailed submissions. He granted the orders I sought for and emailed to ask if parties had any further clarifications. The registrar emailed to formally close the proceedings, and where all the emails would be uploaded into the court system as a formal record of the proceedings.

How Do Lawyers Work During the Crisis?

Lawyers have been adapting to having to work from home. Lawyers have had to very quickly adopt video conferencing platforms (e.g. Teams, Skype, and Zoom) in order to continue to communicate with clients as well as to coordinate meetings with colleagues in the firm.

On 10 April 2020, legal services have now been listed as one of the limited services that may be partially allowed to open up effective 15 April 2020. But there is still uncertainty whether it is all legal services or whether this is limited to the legal services related to the banking and finance sector in order to allow for the disbursement of the various loan and aid packages. The courts continue to remain generally closed until the end of the movement control order.

How Do Banks Work During the Crisis?

Banks continue to operate but with skeletal staff physically present in the offices. Anecdotally, there continues to be orders made in relation to banks, whether by way of injunctions to restrain a call on a bank guarantee or a *Mareva* freezing order on bank accounts.

Does the Crisis Have an Effect on Insolvency Law?

Malaysia has provided a form of temporary insolvency protection for companies. A common method to wind up a company is through the issuance of a statutory demand based on the prescribed amount of RM10,000 (approximately USD2,300) and where the debtor company has 21 days to respond to the demand. This procedure has now been modified where the prescribed amount has been increased five-fold to RM50,000 (approximately USD11,600) and where the debtor company has six months to respond.

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This is a temporary measure that will apply until 31 December 2020. This helps to provide companies with at least this six-month period to stave off the threat of winding up.

2. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

What are the consequences of the Covid 19 pandemic once the pandemic has abated, in the gradual return to a new normality and what are the long-term effects?

First, the financial institutions have provided a six-month moratorium starting from 1 April 2020 on instalment payments for housing loans and hire purchase agreements for individuals and corporations. This helps with giving some breathing space in terms of cash flow. But at the end of the six-month moratorium, it is anticipated that both the borrowers and the lenders will be under stress. There will be more loan defaults at that stage and more non-performing loans.

Second, I do expect financial and economic crime to rise in this period of financial distress.

Third, it was originally anticipated that Malaysia would bring into force its corporate liability provisions in June 2020. These provisions mirror the offence of preventing bribery under the UK Bribery Act. With the COVID-19 outbreak, it is now uncertain whether the effective date of corporate liability will be pushed back further.

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