



**YUSFARIZAL AZIZ & ZAID**  
ADVOCATES & SOLICITOR

# ***Covid-19 Act (2020) : The Aftermath in Tenancy & Construction***

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# Intro to COVID Act (Act 829)

- Malaysia's Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 ("**COVID Act**") was gazetted and came into force on 23 October 2020.
- The COVID Act is part of the measures introduced by the Malaysian Government for individuals and companies economically affected by the COVID-19 pandemic and is aimed at reducing the impact of the pandemic.



# Enforcement Period

*The COVID Act came into force in Malaysia on 23 October 2020. The first COVID-19 measure was implemented on 18 March 2020, more than 7 months earlier.*

***Part II – Inability to perform contractual obligations***

- 30<sup>th</sup> June 2021

***Part III – Limitation Act 1953***

- 31<sup>st</sup> December 2020

***Part VII – Insolvency Act 1967***

- 31<sup>st</sup> August 2021

***Part VIII – Hire-Purchase Act 1967***

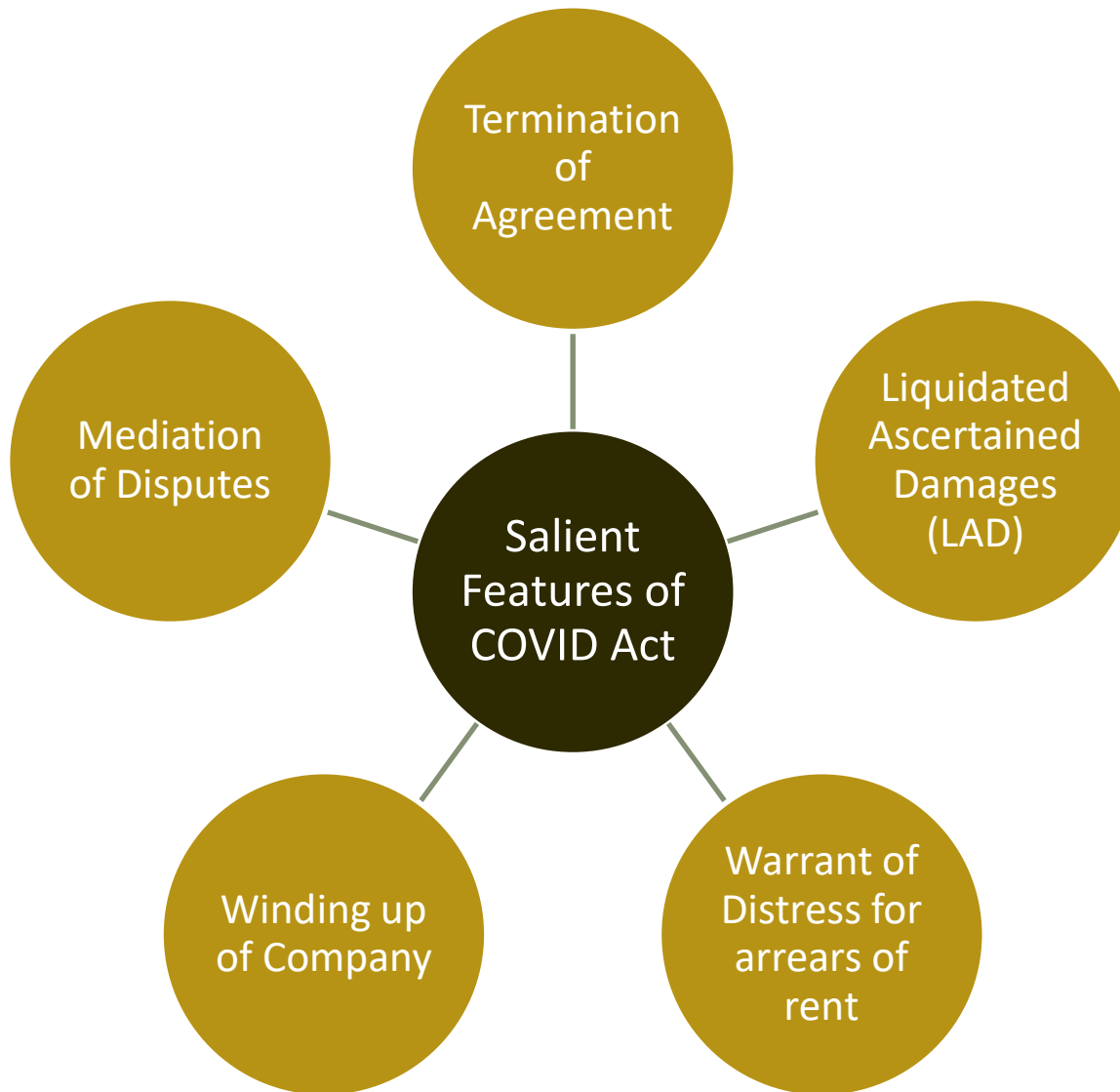
- 31<sup>st</sup> December 2020

***Part X – Distress Act 1951***

- 31<sup>st</sup> December 2020

***Part XI – Housing Development (Control and Licensing Act) 1966***

- 31<sup>st</sup> August 2020 (31<sup>st</sup> December 2020 – Subject to Minister's Approval)





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***Part II –  
Inability to perform  
contractual  
obligations***



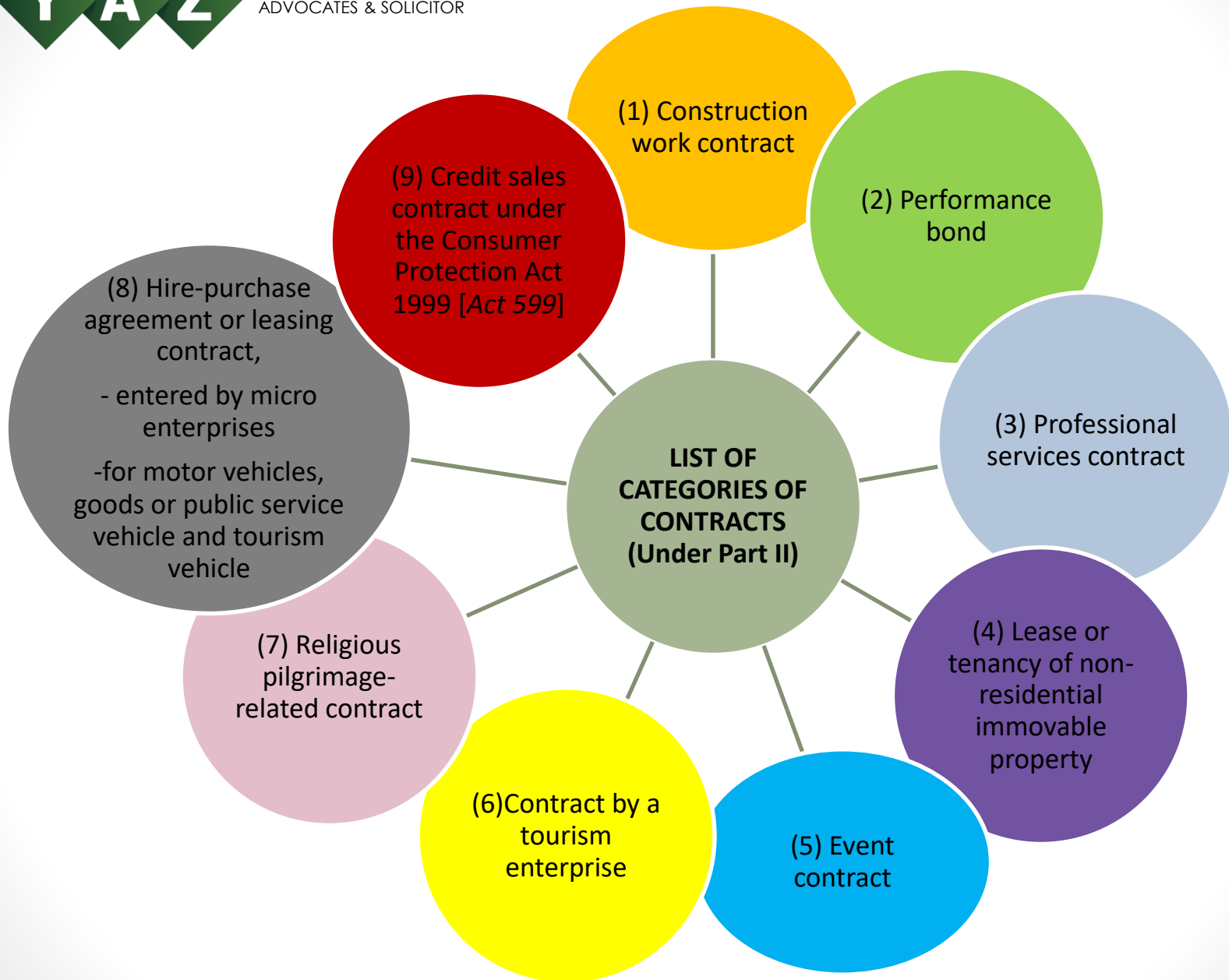
## *Part II – Inability to perform contractual obligations*

### ***Section 7 of COVID Act***

“The inability of any party or parties to perform any contractual obligations arising from any of the categories of contracts specified in the Schedule due to the measures prescribed and/or taken under the COVID ACT, such inability shall not give rise to the other party or parties exercising his or their rights under the contract”

### ***Section 10 of COVID Act (Saving Provision)***

“Any termination of contract, commencement of legal proceeding(s) and forfeiture of deposit etc. which occurred after 18 March 2020 to the date of publication, shall be deemed to have validly commenced and thus will not be caught under the provisions of the COVID Act.”





Issues related to  
Part II of COVID  
ACT

Termination of  
Residential and  
Commercial Properties

Expiry of Agreement

Collection of Monthly  
Rental





# Termination of Tenancy Agreement

## Residential Immovable Properties

Rental issue on residential immovable properties is not covered under the COVID Act.

Hence, No Issue with regards to the termination of the rental agreement as long as the termination was made according to the Agreement and Contracts Act 1950.

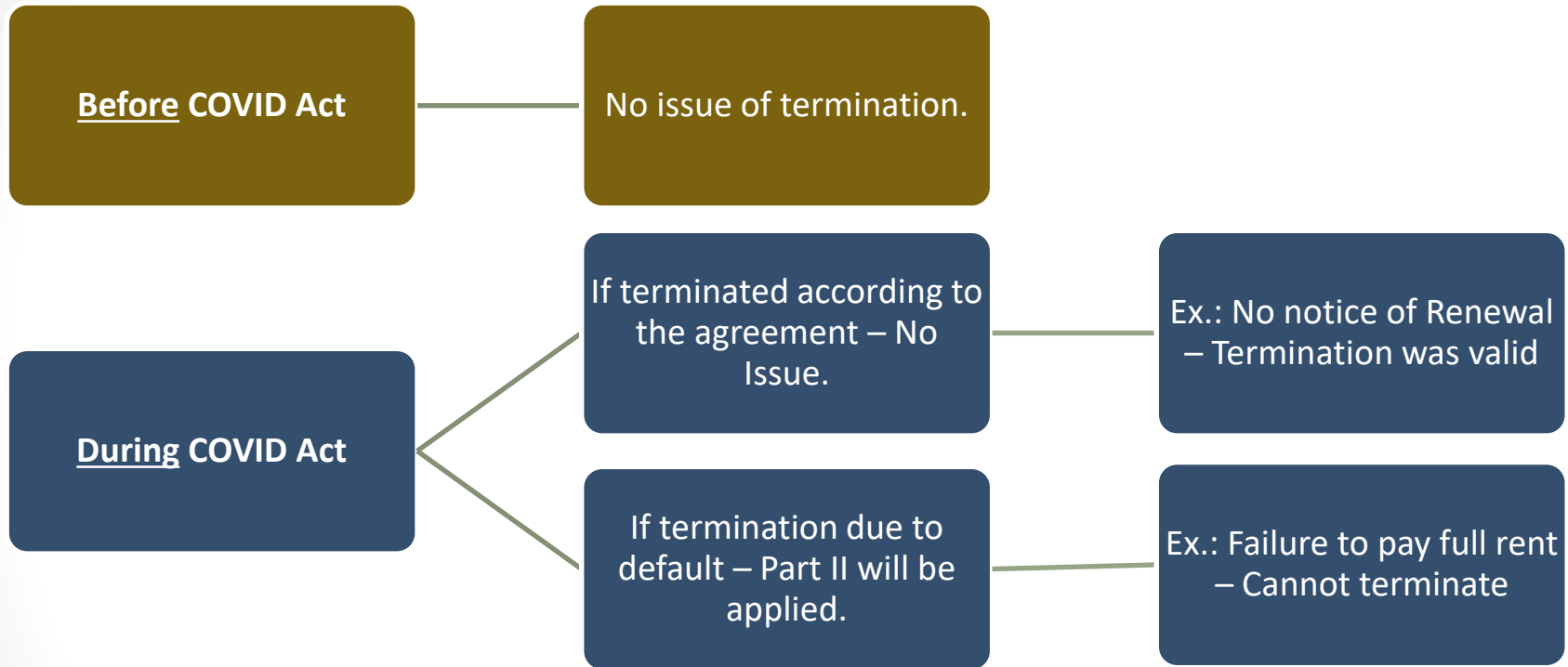
## Commercial Immovable Properties

**Part II, Section 7 of COVID Act** would be applicable

If a tenant fails to perform its obligation under the contract such as to make due and prompt payment of rental for the period between 18 March 2020 to 31<sup>st</sup> June 2021, you are prohibited under the COVID Act to exercise your rights provided in the contract



# Expiry of Agreement



***Ang Pi Kui & Anor v Lee Wee Teck & Anor [2021] 1 LNS 58***

*“The finding of the Court as set out earlier was that the **Tenancy had expired on 31-8-2020 due to no 3 months prior notice to renew followed by a monthly tenancy being terminated by letter dated 18-9-2020.** Taking the Plaintiffs’ argument and either date to be the date of termination, section 7 and section 29 of Act 829 will still not apply. This is due to the saving provision of section 10 where any contract terminated for the period of 18-3-2020 until the date of publication of the Act, which is 23-10-2020, shall be deemed to have **been validly terminated.** The dates of 31-8-2020 and 18-9-2020 are within the period stated in the saving provision.”*



## Collection of Monthly Rental (After Expiry of Agreement)

Monthly tenancy does not amount to a new fixed term of tenancy

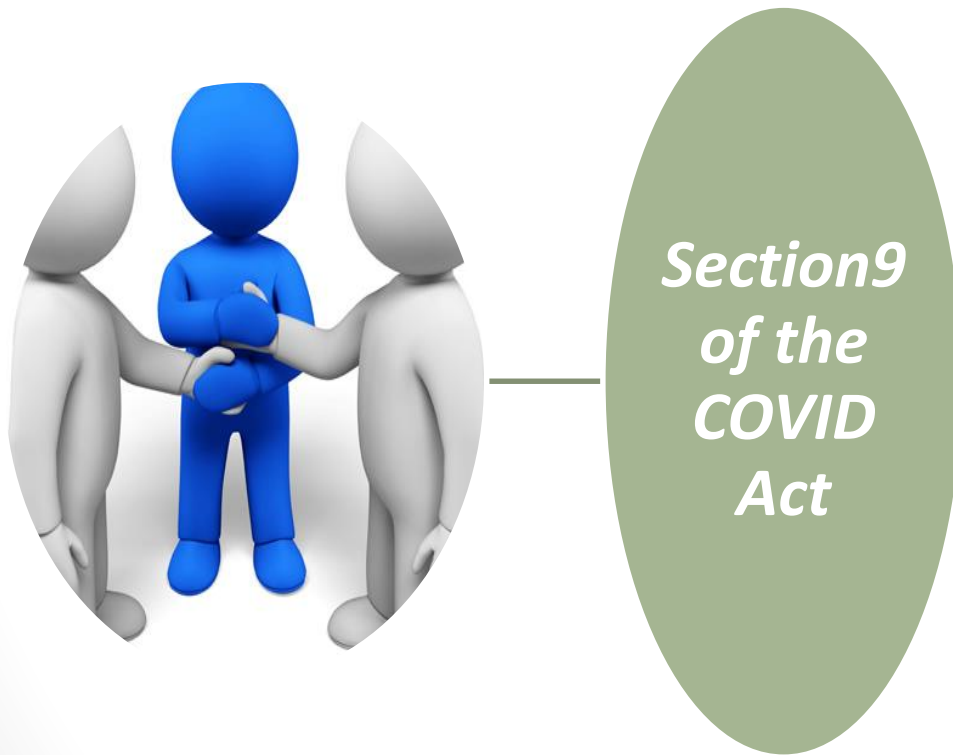


### *Ang Pi Kui & Anor v Lee Wee Teck & Anor [2021] 1 LNS 58*

*“In our present case there is a clear letter from the Defendants that the payment of rent had created a monthly tenancy which was terminated and a notice to vacate was on/before 31-10-2020. Under the circumstances this Court refers to RHB Bank Berhad (supra ) where the Court of Appeal held that **by accepting the rent after the expiry of a tenancy without protest didn't mean that a new fixed term tenancy is created from the option clause.** The Court held that it was only a monthly periodic tenancy as the monthly rent and the proposed new term had yet been agreed by the parties.”*



# Mediation of Disputes



- The mediation process (appointment, role and procedure) may be determined by the Minister.
- Upon conclusion of the mediation, the parties would enter into and sign a written settlement agreement, to be authenticated by the mediator and which would be binding on the parties.



# Mediation in Disputes

The government established the COVID-19 Mediation Centre for dispute sums not exceeding MYR500,000.00.

Depending on the sum in dispute, the mediation process is fully or partially subsidised at different rates

Mediation may be impotent where a defaulting party has no incentive to settle.



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# *Part III - Limitation Act 1953*



# Section 6 of Limitation Act



## Pre COVID Act

- Tort or Contract – expire after 6 years from the date of cause of action.
- Judgment – expire after 12 years from the judgment date
- Recovery of arrears of judgment interest – expire 6 years from the date the interest became due.
- Recovery of any penalty or forfeiture – expire after 1 year from the date of cause of action.



## Post COVID Act

- Any limitation period specified in section 6 of the Limitation Act 1953 which expires during the period from 18 March 2020 to 31 August 2020 shall be extended to 31 December 2020.





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# *Part VII - Insolvency Act 1967*





### *Pre COVID Act*

- the debt owing by the debtor to the petitioning creditor
- the debt is a liquidated sum payable either immediately or at some certain future time
- the act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition

### *Post COVID Act*

- ***Section 20 of COVID Act***
  - “a creditor or creditors shall not be entitled to present a bankruptcy petition against a debtor under section 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 one hundred thousand ringgit.”



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# *Winding up - Companies Act 2016*



### Pre COVID Act

- The threshold amount – RM10,000
- Period to respond to Statutory Demand – 21 days

### Post COVID Act (Exemption Order No.2) (23 April 2020 – 31 December 2020)

- The threshold amount – RM50,000 and above.
- Period to respond to Statutory Demand – 6 months

“The exemption under paragraph 3 is subject to the condition that any company shall be deemed to be unable to pay its debts under paragraph 466(1)(a) of the Act if the company neglects any notice of demand by any creditor to pay its debt or to secure its debt or to compound its debt to the satisfaction of the creditor **within a period of six months after the notice of demand is served on him.**”

### Post COVID Act

(1 January 2021 – Current)

- Period to respond to Statutory Demand – revert back 21 days
- The threshold amount – still RM50,000 and above.



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# *Part VIII – Hire Purchase Act 1967*



PRE – COVID Act

### ***Section 16 of the Hire Purchase Act***

- Permission to take possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement (subject to conditions in S. 16 of HPA)

POST – COVID Act

### ***Section 23 of COVID Act***

- No owner shall exercise any power of taking possession of goods comprised in 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.



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# *Part X - Distress Act 1951*



# Warrant of Distress

*Sections 29 and 30 of the COVID Act*

A warrant of distress issued under the Distress Act 1951 shall not include the distress for arrears of rent for the period from 18 March 2020 to 31 August 2020.

The warrant of distress should exclude the arrears for rental payable for the period from 18 March 2020 to 31 August 2020. Recovery of arrears of rent through distress proceedings during this period would be precluded completely



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***Part XI –  
Housing Development  
(Control and  
Licensing Act) 1966***





Delivery of Vacant Possession  
("VP")  
&  
Liquidated Ascertained Damages  
("LAD")

*Section 35 of the COVID Act*

The calculation of time for delivery of **VP** of a housing development and computation of **LAD** for failure to deliver vacant possession shall exclude the period from 18 March 2020 to 31 August 2020.

COVID Act limits to contracts between purchasers and developers under the HDA 1966

No protection afforded to contractors for the purpose of calculating their LAD liability to their employers under the construction contracts.



Defect Liability Period

***Section 36 of the COVID Act***

Excludes the period between 18 March 2020 and 31 August 2020 while calculating the defect liability period after vacant possession of housing accommodation

This exclusion period may be extended up to 31 December 2020 by the Minister upon application by purchasers.



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THANK YOU



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YAZLAW



bridging **frontiers**  
breaking **barriers**