



REHDA

SURVIVING POST COVID-19 : A COMMON SENSE APPROACH

IMPACT OF COVID-19 ACT ON PROPERTY INDUSTRY

19 DECEMBER 2020

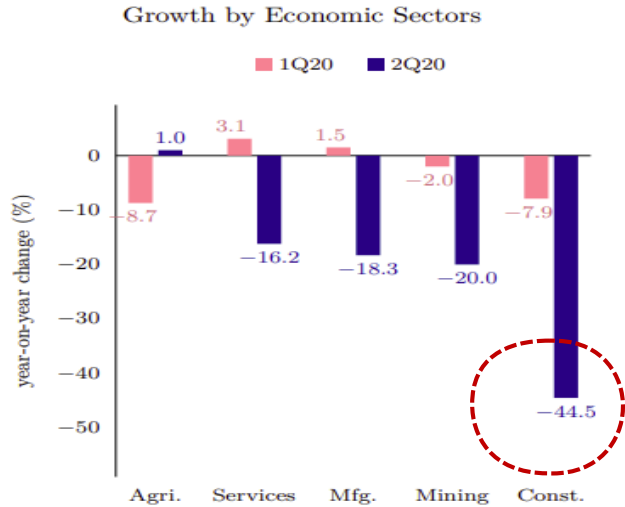
Dato' Ir Soam Heng Choon
REHDA President

IMPACT ON HOUSING & PROPERTY INDUSTRY

- The industry employs 1.4 mil people, pays RM40 bil in salaries annually. Loss due to inactivity is about RM11 bil per month. It has direct and indirect impact on another 180 sectors and sub-sectors both upstream and downstream.
- In the absence of a “force majeure” provision within the standard SPA, there arise practical issues which both developer and purchaser would encounter and if unresolved, would lead to unnecessary legal challenge by both parties.
- The delay in supply chain and longer period to achieve optimum output at construction site will affect / delay developer’s completion deadlines.
- To prevent disruption to the livelihood and businesses as well as economic survival, it is crucial that all contracting parties do not take advantage of the contract against each other.



The construction sector recorded the biggest decline at 44.5%

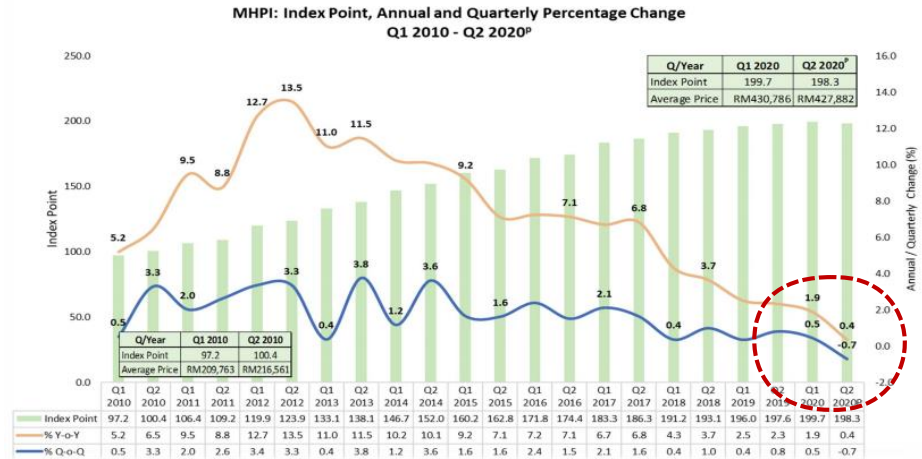


Source : https://www.bnm.gov.my/files/publication/qb/2020/Q2/2Q2020_fullbook_en.pdf

- The pandemic caused by COVID-19 has a serious impact on the economy worldwide. Malaysian property and housing market has not been spared, as seen from the Q2 2020 GDP for construction sector.
- The authorities support the view that the property sector has a spill over effect on about another 200 other sectors and subsectors of the economy and the need to invigorate our industry.

- The Malaysian House Price Index (MHPI) continued to grow at a moderating trend.
- As at Q2 2020P, MHPI stood at 198.3 points (base year 2010), up by 0.4% on annual basis, the lowest annual growth recorded since year 2010.
- However, on quarterly movements, the index points decreased marginally by 0.7% against Q1 2020.

Trend of Malaysian House Price Index (MHPI) and Changes





EFFORTS BY REHDA

9 April 2020

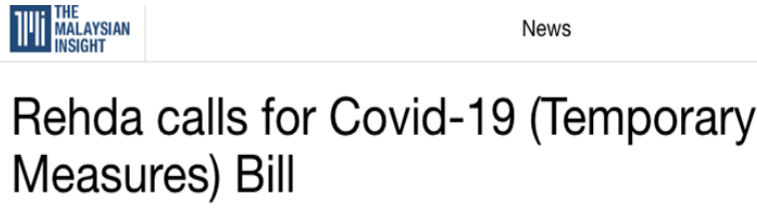
REHDA calls for COVID-19 bill

REHDA urges the government to introduce an all-encompassing force majeure exemption bill or a Covid-19 (Temporary Measures) Bill to lawfully protect players of all industries, including the property sector.

This is to ensure that every party is safeguarded against any form of penalisation that would be imposed under normal circumstances.

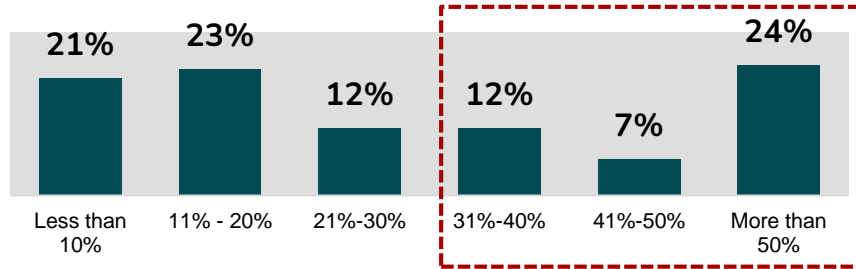
Buyers are now unable to fulfil their obligations with regards to various processes. This includes being unable to complete documentation and progress payments which must be made within 21 days due to the financial institutions' scaled down operations in adherence to the movement control order (MCO).

Developers are also likely not able to meet their completion deadlines as a result of the MCO which has affected the whole supply chain, thus it will take longer to achieve optimum output from construction activities on site.

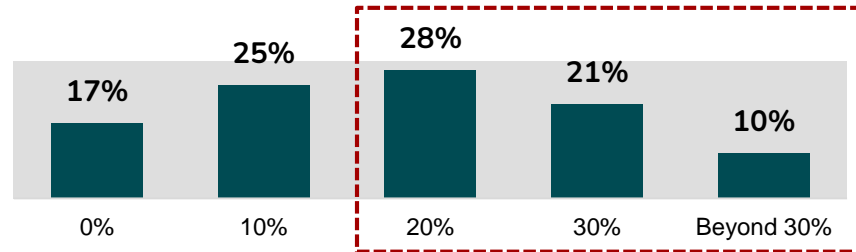


SURVEY ON IMPACT OF COVID-19 PANDEMIC AND POST-MOVEMENT CONTROL ORDER (MCO) ON PROPERTY INDUSTRY

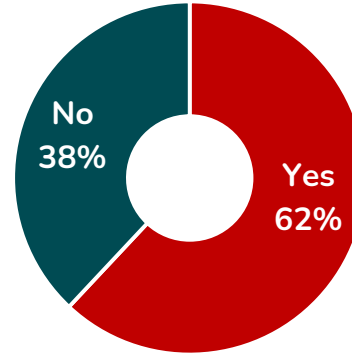
Amongst 121 developers (12 – 30 October 2020)



- **43%** of the respondents experienced more than **30% decline in sales** compared to pre-MCO.

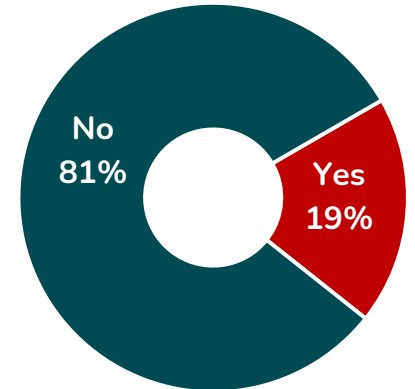


- **84%** of the respondents are **experiencing delays** in construction progress at their site(s) due to MCO.



- **62%** of the respondents stated that there are Sale & Purchase Agreement rejected upon by buyers during post-MCO period. - estimated percentage of rejection is **23%** on average.

- On top of the 167 days (18 March 2020 to 31 August 2020) additional time allowable under the proposed COVID-19 Bill, **19%** of the respondents expected that their project will still experience delay.



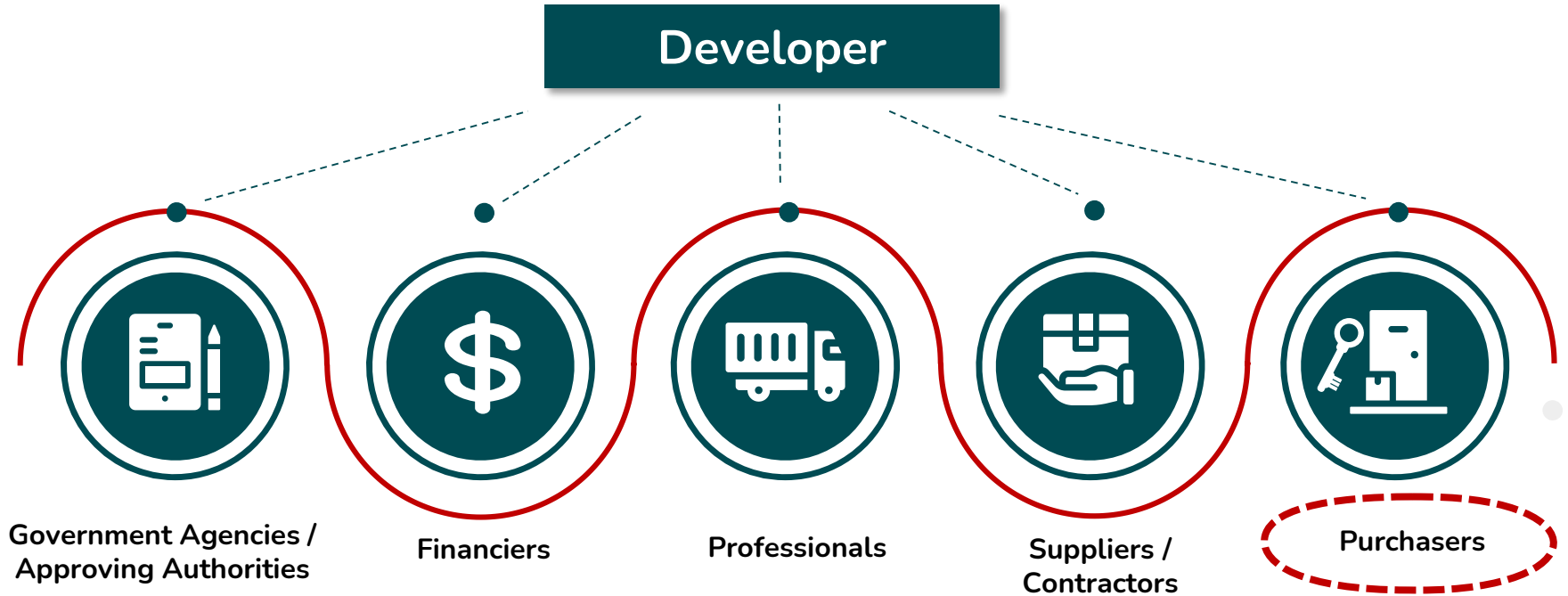
TEMPORARY MEASURES FOR REDUCING THE IMPACT OF CORONAVIRUS DISEASE 2019 (COVID-19) ACT 2020

CAME INTO FORCE 23 OCTOBER 2020

“ TOO LITTLE TOO LATE? ”

“ BETTER LATE THAN NEVER? ”

RELATIONSHIP IN SUPPLY CHAIN



PART XI, Clause 32 – 38 : the Housing Development (Control and Licensing) Act

- S32 – retrospective effect from 18.3.2020
- S33 – “Agreement” means SPAs in Schedules G,H,I and J
- S34(1) – No late payment charges to be imposed on failure to pay instalments from 18.3.2020 to 31.8.2020 (Relevant Period)
- S34(2) and (3) – Relevant Period may be extended up to 31.12.2020 upon written application to the Minister
- S35(1) – Period shall be excluded from the calculation of time for
 - Delivery of Vacant Possession (VP) or
 - Liquidated Damages (LAD) for failure to deliver VP
- S35(2) and (3) - Period for these purposes may be extended at Minister’s discretion up to 31.12.2020 (Extended Period) upon application by Developer.

PART XI, Clause 32 – 38 : the Housing Development (Control and Licensing) Act

- S35(3) VP not deemed taken if Purchaser is unable to take possession from the date of notice during Relevant Period
- S36(1) – Period shall be excluded from the calculation of time for
 - Defect Liability Period (DLP) after Purchaser takes possession or
 - Time for Developer to remedy defects etc.
- S36(2) and (3) - Period for these purposes may be extended at Minister's discretion up to 31.12.2020 (Extended Period) upon application by Purchaser.
- S37
 - No effect on claims made before publication of the Act
 - Late payment charges or LAD paid before publication of Act not refundable
- S38
 - Any claim to Housing Tribunal which has expired from 18.3.2020 to 9.6.2020 - purchaser entitled to submit from 4.5.2020 until 31.12.2020.

Concerns

- Developers are entitled for some relief of LAD but face an extended DLP (no provision to have similar extension of DLP on contractors).
- Now, the Act requires housing developers and purchasers to apply for an extension from the Minister to rely on such reliefs where the Minister appears to be empowered to only grant an extension till 31 December 2020. In view of the rising number of positive COVID-19 cases recently and possibility of extended CMCO, longer time may be needed.
- For savings clause, this protection will not extend to any legal proceedings commenced or any judgment or award obtained relating to the subject matter of such protection under the Act before its coming into force.

Council welcomes Covid-19 Act



EDGEPROP.MY

November 14, 2020 | Updated 4 weeks ago

PETALING JAYA (Nov 14): The Building Industry Presidents' Council (BIPC) has stated that it welcomes the enforcement of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020 [Covid-19 Act].

In a statement yesterday, BIPC said that the Covid-19 outbreak had disrupted building projects due to "Movement Control Orders, Conditional Movement Orders, as well as the Standard Operating Procedures [SOPs] implemented thereafter" and "escalated costs arising from prolongation of projects and costs of compliance with the necessary SOPs".

Still, BIPC also felt that the act will not be able to tackle all the issues encountered by the building industry.

"For example, the Covid-19 Act has now extended the defects liability period [DLP] from March 18, 2020 to end of the year 2020 in favour of purchasers under HDA, thereby increasing the potential rectification costs faced by developers, despite there being no similar extension in respect of DLP in the main building contracts.

"While BIPC welcomes the provision under the Covid-19 Act for disputes to be resolved by mediation, the process in certain instances could be lengthy and costly," explained the council.

"RISM agrees that the construction industry parties need to take more proactive roles especially during this pandemic dealing with disputes. Recently, RISM launched the revised Arbitration Rules during our AGM for qualified members to register with us as panellists. Industry can make use of the empanelled RISM ADR panellists in any dispute related matters," said RISM president Datuk Thiruselvam Arumugam.

"We urge all parties to use their common sense and come up with a commercial decision to settle their issues, because losses due to COVID-19 is no fault of either party. We also hope that all involved parties including developers, contractors and homebuyers will not use the law to take advantage of each other," said REHDA president Datuk Soam Heng Choon.

BEYOND 2020 ?

DO WE EXTEND THE CURRENT COVID-19 ACT?

OR

WILL THERE BE ANOTHER NEW ACT?

“ ADAPTING TO NEW NORMAL ”

MOVING FORWARD

- All industry stakeholders are struggling due to the impact of the pandemic and to avoid bringing the issue to court / insisting on strict contractual right which will incur additional costs.
- Hope that all parties involved including developers, contractors and homebuyers will not use the law to take advantage of each other.
- Urge all parties to use their common sense and come up with a commercial decision to settle their issues, because losses due to COVID-19 / MCO is no fault of any of the parties.
- Since the Act is enacted too late and only remaining balance 2 weeks, in addition to the increasing number of COVID-19 cases for last 1 month, REHDA proposes to extend another 6 months period to provide temporary measures to reduce the impact of COVID-19 to the industry.
- Urge the Government to look / review the current Act and possibility to amend some of the provisions.



REHDA

THANK YOU