COVID-19 Act of Parliament — We Need it NOW.

When I am asked *"What do businesses need from a legal perspective in this COVID crisis?",* I come up with a critical minimum list of 3, for our local SME.

First, breathing space to earn income and turn around a cash flow deficit to meet debts. This translates into

(a) freezing of demands for payment, and
(b) freezing of legal actions

until 31 December 2020, so that they can remain focused on rebuilding their enterprise, without the distraction of demanding creditors.

Second, protection from eviction from business premises, and repossession of machinery, equipment and assets that are essential to generating revenue, for a similar period of time. This is fundamental to SMEs ability to carry on business as a going concern.

The above two measures will not excuse the performance of obligations. They merely suspend the demand and enforcement of rights. Eventually, the debts need to be paid, with haircut and compromise between creditors and debtors, to avoid a graveyard of failed businesses.

The third measure required is then, assistance with the restructuring of debts. With the freezing of rights in place, restructuring may only be called into play a few months down the line, but the framework must be established now. A central agency, to deal with all viable restructuring, will be integral to best manage the deluge of insolvency that we will inevitably see. Our courts will not be able to cope with the numbers.

Over the last 2 years, I observe about 11 restructuring cases published in our law reports. We have more than 1 million companies, 98% of which are SMEs. Danaharta took over and managed about 3,000 non-performing loans and borrower accounts during the Asian Financial Crisis. That was 20 years ago. We will certainly benefit now from the concentrated specialised restructuring, vested in 1 statutory body, with the economies of scale derived from a 1 stop negotiating and restructuring centre.

A statutory corporation has to be established, with near identical powers for the acquisition of non-performing loans (NPL) and the appointment of Special Administrators (SA). This affords the ability to carve out the more complex borrowings from the financial sector, and appoint

SAs to help manage, restructure the debts and turn around these companies. The insolvency burden is spread between the courts and this central agency. Learning from the Danaharta experience, more industry participation can be injected into the statutory structure, including the Oversight Committee that approves the appointment of SAs.

Although financial institutions (FI) are not terribly affected this time around, unlike in the Asian Financial Crisis, the acquisition of NPL from FIs is an important step to identify troubled companies needing specialist aid. This allows SAs to be appointed over appropriate distressed businesses, that can then be managed and recovery maximised by a specialist statutory team.

No doubt time will be required to resource this central agency, but if freezing of rights under the first two measures are put in place, we have 6 months to source the requisite people with skill, talent and integrity.

To ensure adequate balance, the computation of time for time bar purposes for commencement of legal action must recognise and exclude the time suspended by this statutory moratorium. Similarly, time for the claw back of assets by liquidators for undue preference or undervalued transactions, will need to be extended to reflect the freezing of rights. The requisite period of default before the commencements of the winding-up of a company may also be included in this Act, instead of the current Exemption Order that is terribly flawed.

Most GLCs will not be subject to this freezing of rights. This will allow for circulation of some payment within the economy. A schedule of the relevant sectors to which these provisions apply can be drawn.

It is not the solution to all problems but it is the minimum legal intervention local SMEs will need. At least local creditors are held off for a while. Creditors have the local banks hold off for a while.

What is clear is that all these can only be done by an Act of Parliament, not by subsidiary regulation. A new Act is desperately needed to deal with extenuating circumstances. And we need it now. In May 2020. Not July, not October 2020. A delay of 2 months will result in a rush to enforce rights, in an attempt to be the first to grab at depleting assets. There will be a spate of winding up actions by creditors, given the widely held view that the Exemption Order is *ultra vires* the parent Companies Act 2016. The debtor companies, desperate for breathing space will resort to unmeritorious applications to Court for the appointment of Judicial

Managers, possibly in abuse of process. A pandemic will turn to pandemonium. Utter chaos, fuelled by fear and survival instincts.

What is needed instead is a wholesome legally binding framework, that lends much needed certainty and structure to the current volatile circumstances. This will promote confidence. It will reassure the people. It will support businesses to regain a handle on commercial life.

Isn't that what a government is entrusted to do? We need this now, more than ever. It takes only a few days for our able Parliamentary draftsmen to draft the Bill. A similar Act passed in Singapore, gives valuable guidance. The first and second reading of an emergency enactment is done in 1 day.

The COVID Act for Malaysia can and should be passed now.

The New Act can envisage a part 2, that may be brought in by amendment subsequently, to provide also:

(i) for the treatment of employment contacts;
(ii) residential tenancy agreements,
(iii) personal loans from financial institutions;
(iv) tax exemptions for renegotiated obligations;
(v) remote hearings in Courts;
(vi) manner of convening of statutory meetings,

and whatever else deemed necessary. We can wait a little longer perhaps for that.

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