



**Circular No 084/2020
Dated 1 Apr 2020**

To Members of the Malaysian Bar

Conveyancing Transactions during the MCO Period

The Bar Council Conveyancing Practice Committee (“CPC”) has come up with a compilation of issues pursuant to numerous queries it has received in relation to conveyancing transactions during the Movement Control Order period or any extension thereof (“MCO Period”).

In the CPC meeting held online on 30 March 2020, the CPC has discussed these queries and now wish to set out its views here with the intention of giving some assistance or guidance to Members.

Please take note that views expressed by the CPC here are based on assumed facts and are preliminary in nature and do not represent a finding of finality relating to the issues of fact or law in question. Members should seek independent legal advice in relation to any specific issue.

In all dealings between Members, given the challenges arising from the MCO Period, Members are urged to be reasonable when making or considering requests by fellow Members in the true spirit of camaraderie and best tradition of the Bar in a time like this.

Members are reminded that the CPC does not provide legal advice. For more information on this, please refer to [Circular No 202/2016](#), entitled “Role and Scope of the Bar Council Conveyancing Practice Committee” dated 13 Sept 2016.

1. CONVEYANCING DOCUMENTS

1.1 Can a solicitor witness the signing of a document by video conferencing?

- (a) The law on witnessing a signature via video conferencing is uncertain. The law is silent as to the circumstances when this kind of witnessing will be legally valid.
- (b) The primary purpose of witnessing the signature to a document is to prevent identity fraud and to ensure that the signatory has signed the document voluntarily as it cannot be absolutely certain that the signatory is not under any duress of somebody hiding behind the camera or outside the camera view.
- (c) In a majority of cases when witnessing the signature to a document, the witness attests to being in the presence of the person signing the document.

- (d) Watching on a screen someone sign a document when the person signing is not in the same room as the witness, is unlikely to be considered “in the presence of”.
- (e) It is difficult for the witness to be sure that the document that is subsequently sent to him for attestation is the same document he saw on the screen being signed.
- (f) For the above reasons and to avoid the risks involved, the CPC is of the view that a solicitor should not witness signatures via video conferencing.
- (g) Nevertheless, as the issue of whether the witnessing of a signature via video conferencing will be legally valid is a matter of law, the CPC suggests that any solicitor who wishes to witness a signature via video conferencing should seek independent legal advice.

1.2 In a sale and purchase (“SPA”) transaction (“SPA Transaction”), can the completion period or the extended completion period, as the case may be, be automatically extended without late payment interest if the completion period or the extended completion period, as the case may be, expires during the MCO Period?

- (a) There is no standard answer to this question, as the contractual terms, facts and circumstances of each SPA Transaction are different.
- (b) Some *force majeure* clauses (if there is one in the SPA), may provide that a party shall not be liable to the other party for any loss, damages or delay whatsoever and howsoever suffered or incurred by the other party due to any government action which are not attributable to the default of the party, or any other cause which is not reasonably foreseeable by the party, the performance of whose obligations is affected by such a government action. [In respect of *force majeure* clauses, please also see paragraph 1.7(c) below.]
- (c) If there is no such *force majeure* clause, it is strictly a matter for the contracting parties to resolve and/or negotiate within the ambits of the contract.
- (d) Nevertheless, due to the extraordinary circumstances giving rise to the MCO Period, the CPC urges each and every solicitor to do his utmost to explain to his client the delay in the transaction caused by the MCO Period, and to request that his client consider granting the appropriate extension to the SPA Transaction and/or to consider waiving any late payment interest, caused by the MCO Period.

1.3 In an offer to purchase made by a purchaser and accepted by the vendor, can the deadline for executing the SPA be automatically extended if the deadline expires during the MCO Period?

- (a) See the answer to Question 1.2 above.
- (b) All parties, including the purchaser, the vendor, the solicitors and the real estate agent (if any), should attempt in a spirit of reasonableness to negotiate and agree on an extended deadline.

1.4 In an SPA Transaction, the balance purchase price has been paid to a solicitor as a stakeholder to be released to the vendor upon the happening of an event. Such event took place during the MCO Period.

(a) As the solicitor's office will only reopen after the MCO Period, can the solicitor withhold the release of the balance purchase price until after the MCO Period?

(i) In accordance with paragraph 14.10(3) of the Rules and Rulings of Bar Council Malaysia, a solicitor acting as stakeholder for two or more parties must strictly adhere to the terms of the stakeholding at all times and no money held by a solicitor as stakeholder shall be released, utilised, applied or otherwise dealt with by such solicitor except in accordance with the terms of stakeholding or with the express written consent of all relevant parties.

(ii) Therefore, the solicitor as the stakeholder must obtain the express consent of all relevant parties if the solicitor wishes to vary the terms of stakeholding.

(b) Can the solicitor issue a cash cheque for the balance purchase price?

(i) In accordance with Rule 8(3) of the Solicitors' Account Rules 1990, no money shall be drawn from a client account by a cash cheque or a bearer cheque except for payment of disbursement expended or advanced specifically for a transaction or matter for which the solicitor has been retained to act by a client.

(ii) Pursuant to the above Rule 8(3), the CPC is of the view that in order to ensure that it is the payee who receives the payment, a cheque drawn from a client account shall be made payable to a named payee and should be crossed "Account Payee Only" with the marking "Non-Negotiable". If it is to be paid to a person who has no bank account then, it should be made payable to him with his identity card number after his name, and the "or order or bearer" should be cancelled.

1.5 In a contract of sale concluded via a public auction, the completion period expires during the MCO Period, and the solicitor acting for the purchaser is unable to contact the solicitor for the chargee bank or assignee bank or debenture holder. Will the purchaser be granted an automatic extension of time to complete the transaction?

(a) If it is an auction pursuant to an assignment or a debenture,

(i) See the answer to Question 1.2 above.

(ii) All parties should attempt in a spirit of reasonableness to negotiate and agree on an extension of time to complete the transaction.

- (b) If it is an auction pursuant to a charge (High Court or Land Office auction), then Section 257(1)(g) (applicable to High Court auctions) and Section 263(2)(g) (applicable to Land Office auction) both of the National Land Code 1965 expressly provide that the Order for Sale shall specify that the balance of the purchase price shall be settled on any date not later than one hundred and twenty days from the date of the sale and that there shall be no extension of the period so specified.
- (c) However, given this dire situation the parties are in, the purchaser may contact the chargee bank, assignee bank or debenture holder directly without causing his solicitor to act in breach of Rule 42 of the Legal Profession (Practice and Etiquette) Rules 1978. Further, notwithstanding the MCO Period, all members of the Bar are urged to comply with paragraph 14.01(2) of the Rules and Rulings of Bar Council Malaysia, which requires an advocate and solicitor to promptly reply to correspondences from, *inter alia*, other advocates and solicitors.

1.6 For transactions under the Housing Development (Control & Licensing) Act 1966 (“HDA”), if the progressive billing is issued or becomes due for payment during the MCO Period, will the purchaser have an automatic extension period, free from interest?

- (a) See the answer to Question 1.2 above.
- (b) There is no express condition in the prescribed contracts of sale under the HDA to allow the purchaser an automatic extension period, free of interest for progressive billings issued or becoming due for payment during the MCO Period.
- (c) It is a matter for the purchaser and the developer to in a spirit of reasonableness resolve and/or negotiate within the ambits of the prescribed contract of sale.

1.7 Can the Bar Council issue an advisory to all members of the Bar to treat the performance of obligations by members of the Bar and their respective clients, which fall due during MCO Period or the inability to perform the obligations due to the MCO Period, as an event of *force majeure*, even if there is no such *force majeure* clause in the SPA, so as to allow the performance of obligations to be deferred until after the MCO Period in order that an event of default or breach of contract shall not arise?

- (a) See the answer to Question 1.2 above.
- (b) Members of the Bar have to appreciate the fact that the Bar Council has no power to amend or vary contracts entered into by parties.
- (c) The effect of each *force majeure* clause differs depending on its terms. Members are also urged to read up on the effect of *force majeure* clauses, some of which provide for only one option, that is, for a party to terminate a transaction instead of allowing an extension of time.

1.8 In a tenancy agreement, the landlord has agreed to grant the tenant a rent-free period from an agreed date of delivery of vacant possession of the demised premises to the tenant. The agreed date of delivery falls within the MCO Period. If the tenant is unable to take the delivery of vacant possession of the demised premises on the agreed date of delivery due to the MCO Period, will the tenant be entitled to an extension of the rent-free period?

- (a) See the answer to Question 1.2 above.
- (b) All parties should attempt in a spirit of reasonableness to negotiate and agree on an extended date of delivery of vacant possession and the rent-free period.

1.9 Can a law firm dealing with conveyancing transactions commence its office operations on 1 April 2020?

- (a) In accordance with the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020, law firms are not deemed as essential services. Therefore, a law firm cannot operate its offices during the MCO Period.
- (b) However, see BC [Circular No 081/2020](#), dated 30 March 2020 on “**Human Resource Directive on being at Workplace to Process Payroll of Employees and Travelling to Workplace During MCO Period.**”

2. BANKS, LEMBAGA PEMBIAYAAN PERUMAHAN SEKTOR AWAM AND FINANCIAL INSTITUTIONS (for convenience, collectively “Banks”)

2.1 What can a solicitor do if, due to the MCO Period, he is unable to comply with a Bank’s turn-around time requirements relating to security documentation?

- (a) The Bar Council has no control over Banks and is, therefore, unable to impose any conditions on Banks relating to their respective SOP.
- (b) The Bar Council has issued a press statement to call on Banks not to impose unrealistic and unreasonable demands on solicitors. The press statement is accessible at <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-banks-and-other-financial-institutions-not-to-impose-unrealistic-and-unreasonable-demands>.
- (c) The Bar Council will continue to engage with Banks on this matter.

2.2 A Bank insists on strict compliance with their SOP, in particular requiring original signed documents to be delivered with the solicitor’s advice letter for release of banking facilities as the Bank does not accept scanned copies of the documents, even if accompanied with a solicitor’s undertaking to deliver the original documents to the Bank after the MCO Period. What can the solicitor do?

See the answer to Question 2.1 above.

3. DEALINGS WITH GOVERNMENT AGENCIES

3.1 What can a solicitor do if the deadline for filing of CKHT forms and payment of real property gains tax (“RPGT”) falls within the MCO Period?

- (a) As per the updated “*SOALAN LAZIM BERKAITAN URUSAN PERCUKAIAN DALAM TEMPOH PERINTAH KAWALAN PERGERAKAN (18 MAC 2020 HINGGA 14 APR 2020)*” (“LHDN FAQ”) issued by Lembaga Hasil Dalam Negeri (“LHDN”) and updated on 26 Mar 2020, if the deadline for filing of CKHT forms and payment of RPGT falls between 18 Mar 2020 and 30 Apr 2020, the deadline to file the CKHT forms or to pay the RPGT has been extended to 30 April 2020.
- (b) The link to the updated LHDN FAQ can be found in BC Circular No 069/2020 which is accessible at <https://www.malaysianbar.org.my/document/members/circulars/2020---2024/2020&rid=39035>.
- (c) The Bar Council will continue to engage with LHDN on this and other related matters.
- (d) The Bar Council will inform members of the Bar of any further update on this matter from LHDN.

3.2 What can a solicitor do if the deadline for payment of stamp duty falls within the MCO Period?

- (a) See the answer to Question 3.1 above.
- (b) In accordance with the LHDN FAQ, a penalty for late stamping will not be imposed provided that stamp duty is paid by 30 April 2020.

3.3 What can a solicitor do if the deadline for presentation of an instrument of transfer or an instrument of charge for registration at a relevant land office or land registry falls within the MCO Period?

- (a) In general, most land registries and land offices in Peninsular Malaysia have issued circulars relating to waiver of penalty for late presentation due to the MCO Period.
- (b) Such circulars have been forwarded to members of the Bar vide BC Circulars which are accessible at <https://www.malaysianbar.org.my/list/members/circulars/2020---2024>.
- (c) In respect of presentation of instruments of dealing in the Penang Land offices or the Penang Land Registry, the CPC has been informed that a waiver of penalty for late registration is not granted automatically. Please refer to the letter dated 17 March 2020 from *Pejabat Pengarah Tanah dan Galian Pulau Pinang* forwarded to Members vide BC Circular 069/2020 which is accessible at the link provided in item (b) above. The CPC will request the Penang Bar Committee to take up this matter further with the Penang Land Office/Land Registry, if the Penang Bar Committee is of the view that it is necessary to do so.

- (d) Members of the Bar should check with their respective State Bar or State Land Office and the State Land Registry on the extension of time granted for presentation of instruments of dealings, without penalties.

3.4 The deadline for filing a form (the “Form”) under Sections 352(1), 354 & 356(1) (previously known as Form 34) of the Companies Act 2016 (“CA 2016”) falls within the MCO Period. The offices of *Suruhanjaya Syarikat Malaysia* (“SSM”) are closed during the MCO Period and online filing of the Form is not permitted. Can the Form be filed without getting a court order under section 361 of the CA 2016?

- (a) It is not possible to file the Form online during the MCO Period as this service is not available. SSM in its notice dated 17 March 2020 informed that all online services via the SSM portal are suspended during the MCO Period. The notice further states that a 2 weeks moratorium period is granted by SSM for filing after the MCO Period and all penalties for late registration is waived by SSM. A copy of this notice is available [here](#) from page 9 to 10.
- (b) A further notice issued by SSM dated 28 March 2020 states that SSM is commencing its online services in stages starting with only providing company/business profiles from 28 March 2020 onwards, and available 24 hours, subject to limitations on information updated prior to the MCO Period. A copy of this notice is available [here](#) from page 11 to 12.
- (c) Members should take note nevertheless that pursuant to section 352(2) CA 2016, any charge of a company’s property not registered within 30 days from the creation of the charge is void against the liquidator and any creditor of the company.
- (d) Pursuant to section 361 CA 2016, the Court may, on being satisfied that the omission to register a charge within the time required was due to some sufficient cause, make an order that the time for registration be extended. It is possible that the Court may view the fact that it was not possible to file the Form during the MCO Period, as “sufficient cause”.
- (e) In arriving at the answers to this Question 3.4, the CPC has sought the views of the Corporate and Commercial Law Committee of the Bar Council.

3.5 Can the LHDN, land registries and land offices recommence their operations on 1 April 2020? If they cannot do so, perhaps services can be offered online?

- (a) In accordance with the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020, LHDN, land registries and land offices are not deemed as essential services. Therefore, they cannot operate their offices during the MCO Period.
- (b) Currently, some services of certain of these authorities are available online.

- (c) For example, title searches may be conducted online via the *e-Tanah* portal of the WP Kuala Lumpur land registry; documents may be submitted for adjudication of stamp duty payable through LHDN's *STAMPS* portal and company profile searches may be made online at the portal of SSM.

3.6 Under section 338(2) of the National Land Code (“NLC”), an order extending a prohibitory order (“extended PO”) shall not have effect unless a copy of the order is presented for registration before the time at which the prohibitory order to which it relates (“the original PO”) would, but for the extension, have lapsed.

What can a solicitor do if the original PO would lapse during the MCO Period, and the extended PO cannot be presented for registration due to the MCO Period?

Pursuant to section 338(2) of the NLC, unless the extended PO is presented for registration before the original PO lapses, the extended PO shall have no effect. As this is a legal issue, Members should seek independent legal advice.

Should you have enquiries, please use the CPC query form available [here](#) (see page 13 onwards).

Thank you.

**Roger Tan
Chairperson
Conveyancing Practice Committee**



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Title	Penutupan Sementara Operasi SSM Di Seluruh Negara
Content	<p>Kuala Lumpur, 17 Mac 2020 – Lanjutan daripada pelaksanaan perintah kawalan pergerakan di bawah Akta Pencegahan dan Pengawalan Penyakit Berjangkit 1988 dan Akta Polis 1967 bagi mengekang penularan wabak Covid-19, Suruhanjaya Syarikat Malaysia (SSM) akan menutup sementara operasinya di seluruh negara.</p> <p>Penutupan sementara operasi ini akan melibatkan perkhidmatan kaunter, atas talian, e-aduan, kiosk dan perkhidmatan pusat panggilan SSM bermula jam 5 petang 17 Mac 2020 hingga perintah kawalan berakhir.</p> <p>Semua transaksi bawah Akta Syarikat 2016, Akta Pendaftaran Perniagaan 1956 dan Akta Perkongsian Liabiliti Terhadap 2012 perlu di serah simpan atau dikemukakan kepada Pendaftar selepas tempoh perintah kawalan berakhir. Tempoh moratorium selama dua minggu selepas tempoh perintah kawalan berakhir akan diberikan bagi membolehkan permohonan atau serah simpan dibuat. Dalam tempoh moratorium tersebut, fi lewat serah simpan akan dikecualikan.</p> <p>Syarikat-syarikat yang ingin membuat permohonan melanjutkan tempoh mengadakan mesyuarat agung tahunan bagi tempoh masa melebihi enam bulan dari tahun kewangannya berakhir boleh mengemukakan permohonan tersebut selepas tempoh perintah kawalan pergerakan berakhir.</p> <p>Sementara itu, SSM akan sentiasa peka serta memantau perkembangan terkini wabak Covid-19 yang dikeluarkan oleh kerajaan dan memaklumkan kepada pihak awam berkenaan keputusan-keputusan yang memabitkan SSM. Operasi SSM akan kembali beroperasi seperti biasa selepas perintah kawalan pergerakan berakhir dan tertakluk kepada arahan terkini yang dikeluarkan kerajaan.</p> <p>Maklumat lanjut akan menyusul di portal www.ssm.com.my dan laman media sosial SSM.</p> <p>DIKELUARKAN OLEH : SURUHANJAYA SYARIKAT MALAYSIA (SSM) TARIKH: 17 MAC 2020</p>
Date	3/17/2020
Category	News
Year	2020
Metadata	
Date Published	17/03/2020
Created at	3/17/2020 4:55 PM by FAKHRUR RAZI MOHD FADZIL
Last modified at	3/18/2020 11:06 AM by Rashidah Ismail (ICTD)

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Title	SSM Aktifkan Kembali Perkhidmatan Atas Talian Secara Berperingkat Bermula Dengan Pembekalan Maklumat Korporat
Content	<p>Kuala Lumpur, 28 Mac 2020 – Suruhanjaya Syarikat Malaysia (SSM) menyokong penuh arahan kerajaan menguatkuasakan Perintah Kawalan Pergerakan (PKP) bagi tempoh 18 – 31 Mac 2020 dan seterusnya sehingga 14 April 2020. Dalam mematuhi arahan-arahan ini, SSM bertindak dengan penuh rasa tanggungjawab bagi mengekang wabak Covid-19 dikalangan semua warga kerjanya, kontraktor dan lain-lain pekerja yang terlibat di dalam ekosistem sedia ada terutamanya yang berkaitan dengan transaksi yang perlu dilakukan dengan SSM.</p> <p>Sebagai menyahut saranan YAB Perdana Menteri yang telah mengumumkan Pakej Ransangan Ekonomi Prihatin Rakyat bernilai RM250 billion pada 27 Mac 2020, SSM akan turut mengumumkan beberapa inisiatif untuk memudahkan urusan entiti perniagaan dan syarikat dalam mematuhi peruntukan undang-undang yang di tadbir SSM tidak lama lagi.</p> <p>Untuk permulaan, SSM telah mengaktifkan kembali portal pembekalan maklumat korporat SSM melalui capaian https://www.ssm-info.my (SSM e-Info) dan https://www.mydata-ssm.com.my (MyData-SSM) bermula 28 Mac 2020. Perkhidmatan yang ditawarkan terhad kepada pembekalan profil syarikat dan perniagaan serta beroperasi 24 jam sehari hingga berakhirnya tempoh PKP.</p> <p>Maklumat produk profil syarikat dan perniagaan yang dibekalkan adalah tertakluk kepada data-data yang dikemaskini sebelum PKP bermula manakala sebarang maklumbalas berkaitan maklumat yang diterima boleh dikemukakan kepada Pusat Panggilan SSM selepas tempoh PKP berakhir.</p> <p>Walau bagaimanapun, oleh kerana jumlah warga kerja SSM serta mobiliti rakan kongsi adalah terhad dalam mematuhi PKP, hanya perkhidmatan atas talian yang penting sahaja dapat diaktifkan buat masa ini. Status lain-lain perkhidmatan atas talian akan dimaklumkan dari semasa ke semasa.</p> <p>Sementara itu, SSM akan memantau perkembangan terkini arahan-arahan Kerajaan dalam mengawal wabak Covid-19 dan akan memaklumkan kepada para pelanggan secara berperingkat berkenaan keputusan yang memabitkan urusan mereka bersama SSM.</p> <p>Operasi SSM akan beroperasi sepenuhnya selepas PKP berakhir dan tertakluk kepada arahan terkini yang dikeluarkan Kerajaan.</p> <p>DIKELUARKAN OLEH : SURUHANJAYA SYARIKAT MALAYSIA (SSM) TARIKH: 28 MAC 2020</p>
Date	3/28/2020
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Majlis Peguam
Bar Council Malaysia

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A FACTS / SYNOPSIS

No	Date	Summary of Event
1.		
2.		
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5.		

B ISSUE(S) TO BE RESOLVED

No	Summary of Issue
1.	
2.	
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C DOCUMENT(S) ENCLOSED

No	Date	Description of Document	Issued By	Addressed To
1.				
2.				
3.				
4.				
5.				

D DECLARATION

I hereby declare that:

1. I submit this query on my own behalf;
2. I have forwarded herewith a photocopy of all relevant documents for your deliberation;
3. I hereby waive all rights relating to Solicitor-Client privilege;
4. The CPC is at liberty to use the information/documents submitted in any manner it deems fit;
5. I understand and agree that the views expressed by the CPC are based on general conveyancing practice and strictly for the information of the addressee only. It does not constitute legal advice;
6. I agree that all communications with Bar Council including CPC cannot be reproduced in any form or extended to any other party or used in any court proceedings without the prior written consent of the Bar Council;
7. I agree that events taking place after issuance of the CPC’s views may render the views expressed as not applicable.

This query is made by:

Name :

Law Firm (for Members of the Bar):

.....

Address :

.....

.....

.....

Tel: Email:

Date: Signature:

NOTE:

Kindly be informed that although one of the functions of the CPC is to answer questions from members of the public or Members of the Bar concerning conveyancing practice or concerning the conduct of solicitors related to conveyancing practice, the CPC does not entertain or express any view on a matter where the relevant facts are in dispute or where there is a dispute in the law. For such cases we would advise you to seek independent legal advice and you should engage the services of a lawyer who can look into all the relevant facts and issues and advise you accordingly.

The personal information that you provide to the Bar Council, whether now or in the future, may be used, recorded, stored, disclosed or otherwise processed by or on behalf of the Bar Council for the purposes of maintenance of a database for this matter, research and audit, and such ancillary services as may be relevant.