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Recognition of Revenue Progressively from Sale of Residential Property in accordance with MFRS 15 *Revenue from Contracts with Customers* upon enactment of the COVID-19 Bill 2020

Issue

This Staff Paper considers whether the enactment of the *Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020* [COVID-19 Bill 2020] might affect the recognition of revenue from the sale of residential property over time in accordance with paragraph 35(c) of MFRS 15 *Revenue from Contracts with Customers* [MFRS 15].

Analysis of the COVID-19 Bill 2020

For revenue from the sale of residential property to be recognised over time, the contract terms need to meet the criteria in MFRS 15.35, specifically MFRS 15.35(c).

MFRS 15.35(c) explains that revenue is recognised over time if the entity's performance does not create an asset with an alternative use to the entity and the entity has an enforceable right to payment for performance completed to date.

The COVID-19 Bill 2020, once enacted by the Parliament of Malaysia, will provide temporary measures to reduce the impact of COVID-19 as well as modify the relevant provisions in the various applicable Acts including the Housing Development (Control and Licensing) Act 1966 (HDA).

Section 7 of the COVID-19 Bill 2020 provides that the inability of a party or parties to perform a contractual obligation arising from any of the categories of contracts specified in the Schedule to Part II of the COVID-19 Bill 2020 due to the measures¹ to control or prevent the spread of COVID-19 shall not give rise to the other party or parties exercising his or their rights under the contract. The sale and purchase agreements executed under the HDA are not among the list of categories of contract to which Section 7 applies unless subsequently prescribed by the Minister by way of order published in the *Gazette*². Accordingly, Section 7 of the Covid-19 Bill 2020 is not applicable to sale and purchase agreements executed under the HDA. Section 7 of the COVID-19 Bill 2020 is also not applicable to sale and purchase agreements executed under the Housing Developers (Control and Licensing) Ordinance 1993 (HDO 1993) or The Housing Development (Control and Licensing) Ordinance 2013 (HDO 2013) which are applicable in Sabah and Sarawak for the same reason being such sale and purchase agreements are not included under the categories of contracts specified in the Schedule to Part II of the COVID-19 Bill 2020.

In accordance with MFRS 15.35(c), an entity recognises revenue over time if the entity's performance does not create an asset with an alternative use to the entity and the entity has an enforceable right to payment for performance completed to date. The various provisions³ under Part XI (Modifications to the HDA which is only applicable to Peninsular Malaysia and the Federal Territory of Labuan) of the COVID-19 Bill 2020 (Part XI) do not affect the recognition criteria for revenue over time. Sections 34, 36, 37 and 38 of the COVID-19 Bill 2020 are either irrelevant or not a consideration for the satisfaction of recognition criteria of revenue over time under paragraph 35(c) of MFRS 15. Section 35(1) of the COVID-19 Bill 2020 prescribes that, notwithstanding any agreement between the purchaser and the developer, the period from 18 March 2020 to 31 August 2020 shall be excluded from the calculation of:

- (a) the time for delivery of vacant possession of a housing accommodation; and

¹ These are the measures prescribed, made or taken under the Prevention and Control of Infectious Diseases Act 1988 [Act 342].

² Section 8 *Power to amend Schedule*

³ Section 34 *Late payment charges*,
Section 35 *Delivery of vacant possession and liquidated damages*,
Section 36 *Defect liability period*
Section 37 *Saving*
Section 38 *Modification to section 16N of the Housing Development (Control and Licensing) Act 1966*

- (b) the liquidated damages for the failure of the developer to deliver vacant possession of a housing accommodation.

Section 35(2) allows a developer to apply to the Minister of Law for a further extension of time to deliver vacant possession of the housing accommodation. The extension of time neither allows a developer to direct such property for another use nor does it mean that a developer's enforceable right to payment is lost. A developer is said to have an enforceable right to payment for performance if the developer may, subject to it completing the relevant stage of construction of the relevant property, require the purchaser to pay the remaining purchase price due and payable as per the terms of the sale and purchase agreement executed under the HDA. The COVID-19 Bill 2020 does not purport to modify or amend the Housing Developers (Control and Licensing) Ordinance 1993 or The Housing Development (Control and Licensing) Ordinance 2013 and is therefore not applicable to sale and purchase agreements executed thereunder.

Conclusion

The COVID-19 Bill 2020, which modifies provisions in the various applicable Acts, including the HDA, does not alter or vary the rights and obligations of a developer and customer in a sale and purchase agreement prescribed under the HDA in a manner which will affect the developer meeting the recognition criteria in MFRS 15.35(c) and recognising revenue as development progresses. In addition, the COVID-19 Bill 2020 has no bearing on the sale and purchase agreements executed under the Housing Developers (Control and Licensing) Ordinance 1993 or The Housing Development (Control and Licensing) Ordinance 2013.

References

References considered:

- (a) MFRS 15 *Revenue from Contracts with Customers*;
- (b) Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020 [COVID-19 Bill];
- (c) Legal opinions obtained by the MASB on the impact of the COVID-19 Bill on the sale of residential properties by licensed housing developers for Peninsular Malaysia and the Federal Territory of Labuan under the HDA as well as the other relevant legislation applicable to Sabah, and Sarawak and their respective prescribed sale and purchase agreement.