

## LEGAL UPDATES

December 2021

### **Was your business impacted by the recent floods in West Malaysia? Key Legal Considerations**

The unprecedented floods in Klang Valley on December 17 and 18 have caused considerable damage to the wellbeing of persons and businesses alike. In light of that, here are a few key legal issues that businesses should consider to ensure their best interests are protected:

#### **1. Landlord-tenant obligations**

Many businesses tenant their premises from a landlord. A typical tenancy agreement would require a landlord to ensure that the tenanted property is in tenantable condition, including an obligation to maintain the main structure, and possibly electrical and piping systems of the property. The agreement may also include other obligations relating to damage to the property agreed between parties though obligations may vary from contract to contract. As such, tenants and landlords may wish to consider their rights and obligations under the tenancy agreement.

#### **2. Termination of tenancy agreements**

Tenants may wish to consider their rights of termination arising from the flood. Generally, unless specifically provided for, flood damage does not automatically give rise to a right to termination.

Parties may wish to look at the extent of the damage to the property and refer to the damages clause in the tenancy agreement.

#### **3. Warehousing agreements**

For businesses who engage service providers to warehouse their goods, such providers are usually responsible to keep the goods safe, subject to the terms in the contract between them. Some contracts may contain a force majeure clause, i.e. excluding liability for damage to the goods due to causes beyond the control of the service provider. Or a clause limiting the maximum liability of the service provider to a fixed amount. The foregoing clauses have to be analysed against the situation at hand, to see if they apply to exculpate the service provider.

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### **4. Occupiers' liability**

An occupier (i.e. a person with control over the premises) has a duty to take reasonable care to keep visitors reasonably safe whilst within the premises. A claim under occupiers' liability would require the plaintiff to prove that the occupier has failed to take reasonable measures to prevent or adequately mitigate injury to its visitors.

Businesses that own and/or occupy premises may face occupiers' liability claims from their visitors - e.g. shoppers at a supermarket, or users of a car park - for injury to person or property resulting from the flood. Whether such claims would succeed, will depend on the context and facts of the matter.

Employers should also note that the Occupational Safety and Health Act 1984 prescribes a duty of care owed to employees to ensure, so far as is practicable, the safety, health, and welfare to work of all employees.

### **5. Insurance**

Typically, landlords would insure against structural damage to the building, whilst tenants would insure against damaged to content. Parties should consult their insurers to see if losses (including for claims by third parties) from the flood are covered by their policy. Parties should also notify their insurers immediately of the incident and damage suffered, as there is usually an early notification requirement in the policy.

### **6. Employment**

Business owners should also assess their obligations with regards to their employees arising from the impact of the floods to their operations. These obligations may vary depending on circumstances, e.g. obligations owed to day workers.

### **7. Dispute resolution**

Efforts should be made to record the extent of damage caused by the flood (eg. photographs, list of damaged items), in case there is a need to adduce such evidence in any dispute resolution process in the future.

We trust that this short write-up will help focus affected parties on their legal rights and obligations.

This is a joint write-up. Feel free to reach out to us should you have any queries.