

## 客户快讯

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## Restriction of Movement Order

### 行动管制令

Following the global coronavirus (COVID-19) outbreak and the recent spike in COVID-19 cases in Malaysia, the Malaysian Prime Minister announced a Restriction of Movement Order ("**the Order**") on 16 March 2020 as a measure to curb the outbreak. This Order will last for two weeks, starting from 18 March 2020 to 31 March 2020, and is effective nationwide.

继全球冠状病毒（COVID-19）爆发以及马来西亚近期发生的 COVID-19 病例激增状况后，为遏制疫情，马来西亚总理于 2020 年 3 月 16 日宣布了行动管制令（“管制令”）。该命令将从 2020 年 3 月 18 日起执行，至 2020 年 3 月 31 日结束，持续两周，并在全国范围内有效。

### The Order

#### 管制令

In summary, the Order will impose:

现将管制令措施总结如下：

(a) **Control of movements** - no person shall make any journey from one place to another within Malaysia, except to:

**限制活动** - 除以下情形外，任何人不得在马来西亚境内随意外出往返各地方：

(i) perform official duty;

执行公务

(ii) make a journey to and from premises providing Essential Services (defined below);

往返于提供基本保障服务的场所（详见后文定义）；

(iii) purchase, supply or delivery food or daily necessities;

购买、供应或运送食品及日用品；

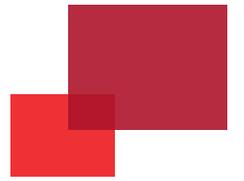
(iv) seek healthcare or medical services; or

寻求医疗或药物服务；或

(v) any other special purposes as may be permitted by the Director General.

经卫生部总监批准的其他特殊目的活动

(b) **No mass gatherings** - general prohibition on mass movements and gatherings, including religious, sports, social and cultural activities.



**禁止大型集会** – 全面禁止大型活动和集会，包括宗教、体育、社会和文化活动

(c) **Closure of premises** - houses of worship, business premises as well as all government and private premises must be closed, except for:

**关闭场所** – 宗教礼拜场所、营业场所以及除下述情形之外的所有政府和私人场所必须关闭：

(i) supermarkets, public markets, convenience stores (including convenience stores selling everyday necessities) (“**Essential Stores**”); and

超市、公共市场、便利店（包括出售日常必需品的商店）（“基本保障品商店”）；以及

(ii) those involved in essential services for the country, namely:

涉及为国家提供基本保障服务的场所或机构，即：

- banking and finance  
银行和金融
- electricity and energy  
电力和能源
- fire 消防
- port, dock and airport services and undertakings, including stevedoring, lighterage, cargo handling, pilotage and storing, or bulking of commodities  
港口、码头和机场业务与服务，包括装卸、驳运、货物处理、引航及仓储或集装商品
- postal 邮政
- prison 监狱
- production, refinery, storage, supply and distribution of fuel and lubricants  
生产、炼制、储存、供应及运送销售燃料和润滑油
- healthcare and medical  
健康及医疗
- solid waste management and public cleansing
- sewerage  
污水处理
- radio communication including broadcasting and television  
无线通讯，包括广播和电视
- telecommunication 电信
- transport by land, water or air  
陆路、水路或空运
- water 供水
- e-commerce 电子商务
- defense and security  
国防及保安
- food supply 食品/食物供应
- wildlife 野生动物管理
- immigration 移民局
- customs 海关
- hotels and accommodations  
酒店和住宿
- any services or works determined by the Minister as essential or critical to public health or safety  
任何其他部长认为对公共卫生或安全必不可少或至关重要的服务或工作

固体垃圾/废物管理及公共卫  
生

(Collectively, the "**Essential Services**"). Companies producing products that fall within the supply chain of the Essential Services sector are also exempted from the Order. The manufacturing plants of these companies can continue to operate with minimal manpower, and must comply with guidelines issued by the Ministry of Health on social distancing and workplace management. The list of employees working at the business premises (including factories) during the control period must be provided to the Ministry of International trade and Industry.

（统称“基本保障服务”）。在基本保障服务供应链中提供产品的公司也免于执行该管制令。这些公司的制造工厂需用最少的人力继续维持经营，并且必须遵守卫生部发布的有关社会距离和工作场所管理的规范。管制期间在营业场所（包括工厂）工作的雇员名单必须提交给国际贸易工部。

(d) **Closure of education sector** - closure of all:

关闭教育机构- 关闭所有：

- (i) kindergartens, government and private schools including daily schools, boarding schools, international schools, *tahfiz* centers and other primary, secondary and pre-university institutions; and

幼儿园、政府及私立学校、包括常规学校、寄宿学校、国际学校、宗教学校及其他中小学和预科班

- (ii) public and private higher education institutions (IPTs) and skills training institutes.

公立及私立高等教育机构和技能培训机构或中心

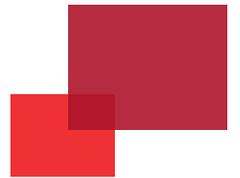
(e) **Travel ban:**

旅行禁令

- (i) All Malaysian citizens are prohibited from travelling out of Malaysia, unless they hold a permanent residency status of another country and will not return to Malaysia before 31 March 2020;

所有马来西亚公民禁止出国旅行，除非其持有另一国永久居民身份且在2020年3月31日之前不会返回马来西亚

- (ii) Malaysian citizens, non-Malaysian citizens with diplomatic or permanent resident status, and non-Malaysian citizens with valid employment passes and working within the Essential Services sector, returning from overseas travel must undergo a health examination upon arrival before proceeding for immigration clearance at any point of entry to Malaysia, and be self-quarantined for 14 days; and



从海外返回马来西亚的马来西亚公民、具有外交或永久居民身份的非马来西亚公民以及持有效就业准证/工作准证并且在基本保障服务领域工作的非马来西亚公民，在抵达任何马来西亚关卡办理入境通关手续之前，必须接受健康检查，进入后要进行 14 天的自我隔离； 以及

- (iii) Malaysian citizens working in Singapore, Thailand, Brunei and Indonesia are prohibited from entering Malaysia unless they comply with the requirements set out in (c)(i) and (c)(ii), which would in turn prohibit them from travelling out of Malaysia during the control period;

在新加坡、泰国、汶莱和印度尼西亚工作的马来西亚公民被禁止进入马来西亚除非此公民符合以上（c）（i）和（c）（ii）的规定。而且因这些规定，他们一旦在管制期内入境，就不能在管制期内离开马来西亚；

All other non-Malaysian citizens, including non-Malaysian citizens holding valid employment passes but not working within the Essential Services sectors, tourists and foreign visitors are prohibited from entering Malaysia.

所有其他非马来西亚公民，包括持有有效就业准证/工作准证但不在基本保障服务领域或部门工作的非马来西亚公民、游客及外国访客均不允许在此期间进入马来西亚。

### **Liability for non-compliance**

#### **违反管制令所需承担的责任**

The Order is made under the Prevention and Control of Infectious Diseases Act 1988 ("PCIDA") and the Police Act 1967 ("PA"). The police is required to render assistance for the purpose of enabling any officer authorised under the PCIDA to execute the Order. The police can take lawful measures, including:

该管制令是根据 1988 年《预防和控制传染病法》（“PCIDA”）和 1967 年《警察法》（“PA”）制定的。警察需要协助 PCIDA 下授权的任何官员执行命令。警察可以采取的合法措施包括：

- (a) apprehending all persons whom he is by law authorised to apprehend;

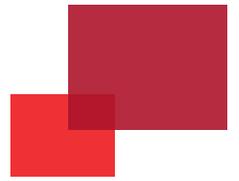
逮捕所有警察依法被授权需要逮捕的人

- (b) conducting prosecutions; and

进行起诉； 以及

- (c) giving assistance in the carrying out of any law relating to revenue, excise, sanitation, quarantine, immigration and registration.

协助执行任何与收入、消费税、卫生、检疫、移民和注册有关的法律。



Non-compliance with the Order is an offence under the PCIDA, which upon conviction, will attract a fine not exceeding RM1,000 or imprisonment for a term not exceeding 6 months, or both.

违反该管制令是 PCIDA 下的一项罪行。一经定罪，将处以不超过 1,000 马币的罚款或不超过 6 个月的监禁，或两者并罚。

Where the offence is committed by a body corporate, any director, manager, secretary or officer of the body corporate or responsible for / assisting with the management of the affairs of the body corporate shall be deemed guilty of the offence, unless proven otherwise.

如果违反该管制令的罪行是由法人实体犯下的，除非另有证明，否则该法人实体的任何董事、经理、该法人实体或负责/协助该法人实体管理事务的秘书或人员/职员，均会被视为犯罪。

### **Implications on companies**

#### **对公司的影响**

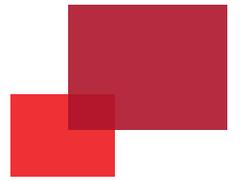
##### **(a) Force majeure**

##### **不可抗力**

A force majeure ("FM") clause is a provision that often appears in commercial contracts and excuses a party's failure to perform as a result of unanticipated events outside of the party's control. An FM clause may relieve a party from liability arising from their inability to fulfil their contractual obligations due to circumstances beyond their reasonable control. Performance is usually suspended for a short period or the duration of the FM event. If the FM event is prolonged or permanent then the clause may allow either party to terminate the contract. Interpretation of the specific FM clause is necessary to ascertain if the FM clause can be invoked and whether COVID-19 constitutes an FM event depends on the FM clause itself.

不可抗力条款是经常出现在商业合同中的条款，该条款为当事方因无法控制的突发事件而未能履行责任提供辩解。不可抗力条款可以免除当事方由于遇到超出其合理控制范围的情况而无法履行合同义务而引起的责任。通常在短时间内或不可抗力事件持续时间内，履约被暂停。如果不可抗力事件成为长期或永久事项，则该条款为任何一方终止合同提供了可能。对合同中不可抗力条款的解释是确定该条款是否能被援引的必要环节。COVID-19 事件是否构成不可抗力事件也取决于该条款本身。

It will be crucial for companies to identify quickly if they need to revisit any key contracts (tenancies and leases, supply, manufacturing, service etc.) to determine if it is possible to invoke the FM clause to suspend or relieve itself from its obligations (such as rental payments).



对于公司来说，迅速找出需要重新审查的重要合同（租赁和租赁、供应、制造、服务等）并确认是否有可能援引不可抗力条款来中止或减轻其义务（例如租金支付）变得至关重要。

For new contracts, provisions covering similar eventualities should also be strategically reviewed and drafted.

对于新合同，还应从战略上审查和起草涵盖类似情况的条款。

In addition to commercial contracts, companies should also look carefully at its financing agreements, insurance policies, investment agreements and any other contracts that may be affected by the current situation for similar FM clauses.

除商业合同外，公司还应仔细查看其融资协议、保险单、投资协议以及其他任何可能受当前状况影响的合同中类似不可抗力的条款。

## **(b) Frustration**

### **履约受挫**

The doctrine of "frustration" may also apply to similar circumstances that would trigger an FM clause. There must be a supervening event (frustrating event) that is not the fault of either party, significantly changes the nature of the contractual rights and/or obligations and makes it unjust to hold the parties to the contract. It is not sufficient if the event makes it more expensive or onerous or impracticable to perform the contract, nor if an alternative method of performance is available.

履约“受挫”原则也可能适用于类似触发不可抗力条款的情况。即必须存在不是任何一方的过失的重大事件（受挫事件），使得合同权利和/或义务的性质大大改变，而且继续履行合约会对合同各方不公平。如果该事件使得履行合同变得更加昂贵、繁重或不切实际，或者没有其他可供选择的履约方法，还不足以构成受挫事件。

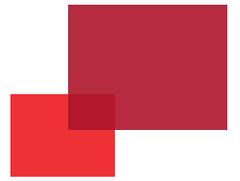
Frustration results in the termination of the contract, and the terms of the contract cease to operate. The Court then has a wide discretion to allocate the parties' rights and liabilities, including restitution of monies paid or payable, claim for expenses incurred and compensation for benefits rendered to the other party prior to the frustration of the contract.

受挫导致合同终止且合同条款停止执行。之后，法院拥有广泛的自由裁决权来分配当事人各方的权利和义务，包括归还已付或应付的款项、赔偿已支出的费用、以及对在合同受挫之前已向另一方提供的利益进行补偿。

Similar to the FM clause, companies should identify quickly if there are any contracts that would qualify as being 'frustrated' and determine if it wishes to terminate these contracts on that basis.

与不可抗力条款类似，公司应迅速确定是否有任何合同被视为“受挫”，并确定是否希望以此为基础终止这些合同。

## **(c) Insurance**



## 保险

Companies may wish to consider the availability of business interruption policies where applicable and commence engagement with insurers.

公司不妨考虑是否购买合适的业务中断保险并开始与保险公司接洽。

### **What does it mean for employers?**

#### **对雇主意味着什么**

Businesses will face concerns of decreased revenue and the ability to maintain its overhead costs in respect of its operations, including payment of wages to its employees. Some businesses have also indicated the possibility of implementing retrenchment exercises in light of the virus outbreak.

企业将面临收入下降以及维持运营所需的间接费用（包括向其雇员支付工资）支付能力方面的担忧。一些企业还表示，鉴于病毒爆发，有可能实施裁员行动。

The following is a general guidance to commonly asked questions.

以下是一些常见问题的基本指南。

### **Closure of business**

#### **停业**

Unless your business can be operated remotely/virtually (i.e., employees can work from home), or your business falls within the Essential Services sector or is one of the Essential Stores, your business will have to be closed.

除非您的企业可以进行远程/虚拟办公（即，员工可以在家工作），或者您的企业属于基本保障服务行业或属于基本保障品商店之一，否则您的企业必须关闭。

### **Travel restrictions**

#### **旅行限制**

The travel ban and requirements will affect physical business meetings. Non-Malaysian citizens, including those who have been issued with a pass to remain in Malaysia, are prohibited from entering Malaysia if they are outside the country upon the commencement of the Order period, unless they are involved in the Essential Services sector or granted diplomatic or permanent resident status.

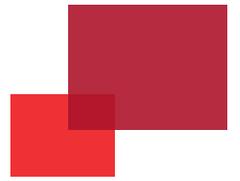
活动往来限制和相关要求将影响线下商务会议。非马来西亚公民，包括已获得留在马来西亚准证的非公民，如果在管制令开始时还在国外，则被禁止进入马来西亚，除非他们涉及为马来西亚提供基本保障服务或获得外交豁免或永久居民身份。

### **Alternative work arrangements**

#### **替代性工作安排**

Businesses will have to consider alternative work arrangements, such as:

企业将不得不考虑采用其他方式安排工作，例如：



(a) to the extent practicable, implement work-from-home arrangements; and

在切实可行的范围内，安排员工在家工作； 和

(b) arrange for meetings to be conducted virtually (by video or audio conference).

安排进行线上虚拟会议（视频或音频会议）。

Common concerns arising from such arrangements include decline in employee productivity and the inability to monitor employees' performance. Putting in place appropriate policies on such work-from-home arrangements will help regulate the rights and limits of both the employer and the employee.

这种安排引起的普遍担忧包括，员工效率下降和无法监控员工绩效。 对此类在家工作安排制定适当的政策将有助于规范雇主和雇员的权利和限制。

### **Are we required to pay employees during the implementation of the Order?**

#### **在管制令执行期间，我们是否需要为员工支付工资？**

Yes. The government has not made any announcement which exempts employers from making salary payments.

是的。 政府尚未发布任何免除雇主支付工资的公告。

There are guidelines stating that employers should continue making salary payments to its employees during any quarantine period, whether the employee is working or not. Whilst not law *per se*, the guidelines will most likely be considered by the Industrial Court when determining the issue of constructive dismissal.

有指南指出，雇主应在任何隔离期内继续向其雇员支付工资，无论该雇员是否在工作。 虽然本身不是法律，但在确定推定解雇问题时，劳工法庭很可能会考虑该指南。

### **Can employees work from home or are they required to be given paid time-off?**

#### **雇员可以在家工作吗？还是需要让他们带薪休假？**

Employers can request employees to work from home, where it is practical. The employer should provide the employees with the necessary facilities to work from home, otherwise an employer may be exposed to potential liability arising from lack of appropriate facilities to properly conduct his/her work.

在可行的情况下，雇主可以要求员工在家工作。 雇主应为雇员提供在家工作的必要设施，否则雇主可能会因雇员缺乏适当的设施来正确开展工作而承担潜在的责任。

If the nature of the operations do not allow for work-from-home arrangements, then employees must be placed on paid-leave. Employees will need to be paid



throughout the restriction period and the employees cannot be required to utilise their annual leave.

如果工作的性质无法实现在家工作的安排，则必须给予雇员带薪休假。在整个管制期内都需要支付该雇员薪资，并且不能要求雇员使用其年假。

### **Can we force employees to take unpaid leave/pay-cut?**

#### **我们可以强迫员工休无薪假或减薪吗？**

Forcing employees to take unpaid leave or a pay-cut is a unilateral variation of their employment terms and employers run the risk of facing a constructive dismissal claim. Employers should obtain prior consent of its employees where it is seeking to require its employees to take unpaid leave or a salary reduction. These requests are typically made before the employer decides on more drastic cost-cutting measures, such as workforce reduction or business closure.

强迫雇员休无薪假或减薪是单方面雇用条件的变化，雇主有面临被员工提起推定解雇索赔的风险。雇主要求雇员休无薪假或减薪时，应事先征得其雇员的同意。这些请求通常是在雇主决定采取更激进的削减成本措施（例如裁员或关闭企业）之前提出的。

Employers must be careful to ensure that the employee's salary does not fall below the minimum basic salary prescribed by the Minimum Wage Order 2020.

雇主必须小心确保雇员的工资不低于《2020年最低工资令》规定的最低基本工资。

### **Can we implement a retrenchment exercise?**

#### **我们可以进行裁员吗？**

Businesses must demonstrate that it had taken steps to avert retrenchment if faced with an unfair dismissal claim. Specifically, businesses must ensure that:

如果面临员工的不公平解雇索赔，企业必须证明它已采取措施避免裁员。具体来说，企业必须确保：

- (a) it has a legitimate business case to implement a retrenchment exercise, and such business case is supported by substantive evidence; and

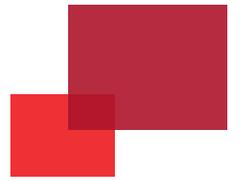
拥有进行裁员活动的合法商业情况，并且该商业情况有实质证据支持；以及

- (b) it has implemented the retrenchment exercise in a fair manner in line with Malaysian industrial practice standards, such as, among others, complying with termination notice obligations and providing severance payments.

已按照马来西亚的工业惯例标准公平地实施了裁员行动，例如遵守终止通知义务并提供遣散费。

Special considerations also apply to employees protected under the Malaysian Employment Act.

另外对于受《马来西亚就业法》保护的雇员，有些特别事项要注意。



## Conclusion

### 结论

Businesses should take note of the Order and the consequential restrictions and/or bans. Businesses should make prompt arrangements to safeguard their interests and to ensure compliance and avoid attracting liability under the PCIDA and the PA. There is a possibility of the Order being extended and/or amplified, so we would advise watching developments closely.

企业应重视该管制令以及相应的限制和/或禁令。企业应立即做出安排，以维护自身利益，确保合规并避免招致 PCIDA 和 PA 项下的责任。该管制令的执行时间有可能被延长和/或执行范围可能被扩大，因此我们建议您密切关注事态发展。

[www.wongpartners.com](http://www.wongpartners.com)

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