

Client Alert

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Prevention and Control of Infectious Diseases Act (Measures within the Infected Local Areas) Regulations 2020

The Malaysian Government has issued the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 ("**Regulation**") which will have effect for the period from 18 March 2020 to 31 March 2020 ("**Control Period**").

Several Governmental Ministries have also issued guidelines and provided clarification on the impact of the Restriction of Movement Order ("**Order**"), namely the:

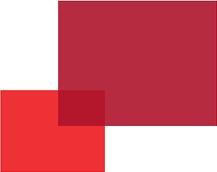
- (a) Prime Minister's Department (National Security Council) ("**PMD**") on matters relating to continued operation of businesses providing Essential Services and certain pre-approved non-Essential Services;
- (b) Malaysian Immigration Department ("**MID**") on matters relating to border control;
- (c) Ministry of Domestic Trade and Consumer Affairs ("**MDTCA**") on matters relating to the retail sector;
- (d) Ministry of Transportation ("**MOT**") on matters relating to transport services;
- (e) Ministry of Works ("**MOW**") on matters pertaining to construction; and
- (f) Ministry of Higher Education ("**MOHE**") on matters relating to the operation of higher education institutions,

((a) - (f) and the Regulation, collectively referred to as the "**Additional Guidelines**").

1. Provision of Essential Services

The Regulation includes an updated list of Essential Services, as follows:

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| (a) water; | (i) prison; |
| (b) electricity and energy; | (j) solid waste management and public cleansing; |
| (c) telecommunication; | (k) defense and security; |
| (d) postal; | (l) sewerage; |
| (e) transport by land, water or air; | (m) food supply; |
| (f) banking and finance; | |
| (g) healthcare and medical; | |
| (h) fire; | |

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| <ul style="list-style-type: none"> (n) production, refining, storage, supply and distribution of fuel and lubricants; (o) port, dock and airport services and undertakings, including stevedoring, lighterage, cargo handling, pilotage and storing or bulking of commodities; (p) radio communication including broadcasting and television; | <ul style="list-style-type: none"> (q) e-commerce;* (r) wildlife;* (s) immigration;* (t) customs;* (u) hotels and accommodations;* (v) any services or works determined by the Minister as essential or critical to the public. |
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**New services that were not included in the Order on 16 March 2020.*

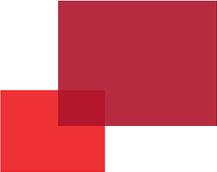
There is also no longer an express reference to "irrigation" and "pharmacy", but these activities will fall under items (a) and (g) respectively. Whilst the reference to "retail" may have been removed from the updated list, there is specific reference to the "premises involved in food supply chain or in selling food and beverages" in the Order, which would cover the operations of supermarkets, public markets and convenience stores.

Business premises involved in Essential Services may remain open during the Control Period, provided the number of personnel and patron at the premises are kept to a minimum. Employees not carrying out critical functions within the business (such as general administration) are required to work from home.

2. Additional Guidelines

The Additional Guidelines provide clarity on the following issues:

- (a) **closure of all business premises for non-Essential Services** during the Control Period, except those with prior written permission of the Director General of Health ("**Director General**");
- (b) **continued operation of certain manufacturing facilities** involved in the manufacturing of a prescribed list of critical items (see **Appendix 1**) during the Control Period is permitted, subject to compliance with specified operating conditions (see **Appendix 2**);
- (c) **control on movements**, where no person shall make any journey within Malaysia during the Control Period, except to:
 - (i) perform an official duty;
 - (ii) travel to and from premises providing Essential Services and non-Essential Services that are open with the prior written approval of the Director General;
 - (iii) purchase, supply or deliver food or daily necessities;
 - (iv) seek healthcare or medical services; and

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- (v) any other special purposes permitted by the Director General of Health;
 - (d) **inter-state travel** during the Control Period is prohibited unless under special circumstances (such as death of a family member or to obtain medical treatment) and with the prior written permission of the police;
 - (e) **ban on all gatherings** during the Control Period, whether for religious, sports, recreational, social or cultural purpose (including wedding celebrations);
 - (f) **funeral ceremonies are permitted** during the Control Period, provided that the number of attendees are kept to a minimum;
 - (g) **Malaysian citizens and individuals holding diplomatic or permanent resident status** returning from abroad during the Control Period are required to (i) undergo a health examination before proceeding for immigration clearance, and (ii) self-quarantine for 14 days;
 - (h) **transport vehicles (such as lorries) carrying Essential Items** may continue to operate during the Control Period, whilst vehicles carrying construction materials are strictly prohibited on the road; and
 - (i) **all construction work must stop** during the Control Period, save for critical work that if not continued shall be a danger to the public or the environment such as slope repair work, lift maintenance or repair, and any other emergency work.

MDTCA

The MDTCA announced that:

- (a) distribution centres (including e-commerce warehouse and supporting warehouse services) are allowed to operate;
- (b) F&B businesses are not allowed to provide dine-in services and the operations must be limited strictly to take-away or drive-through services;
- (c) food delivery services can only be undertaken by food delivery companies, such as GrabFood or Foodpanda;
- (d) only the supermarket area of department stores selling food and specified essential items are allowed to operate;
- (e) retail operations (selling food and essential daily items) are encouraged to manage the unreasonable purchase of food and essential items by consumers;
- (f) all renovation work must be postponed unless the work involves building safety issues and the prior approval of the Ministry of Works and the Construction Industry Development Board have been obtained;
- (g) the operation of self-service laundrettes is prohibited;
- (h) businesses operating consumer service call centers, security services and waste collection services are allowed to continue operations; and

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- (i) the relevant quotas of controlled articles (rice, sugar, cooking oil and flour) prescribed under the Control of Supplies Act must be complied with.

MOW

The MOW announced that:

- (a) an application for an exemption from construction work during the Control Period must be recommended by either the project director or resident engineer; and
- (b) the government will not be responsible for any losses that may be incurred due to the potential delays to the completion of any construction work from the stop work order issued during the Control Period.

Construction or project development companies (as well as any other businesses) should carefully review for force majeure provisions in the relevant contracts to ascertain if they can be invoked, and whether the Order constitutes a force majeure event.

Immigration

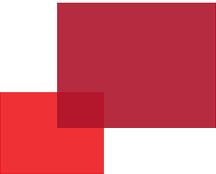
The MID clarified that:

- (a) Malaysian citizens working in Singapore, Thailand, Brunei and Indonesia are prohibited from entering Malaysia, unless they (i) undergo a health examination upon arrival before proceeding to immigration clearance at any point of entry to Malaysia, (ii) be self-quarantined for 14 days, and (iii) do not leave the country during the Control Period;
- (b) only non-Malaysians with valid employment passes and working in Essential Services may return from abroad during the Control Period, subject to the provision of a confirmation letter issued by the employer. Such individuals will also be subject to the (i) health examination, and (ii) 14 days self-quarantine; and
- (c) all other non-Malaysians, including (i) those holding valid employment passes but not working in Essential Services, (ii) tourists, and (iii) foreign visitors, are prohibited from entering Malaysia during the Control Period.

MOT

The MOT announced that:

- (a) domestic and international flight operations shall continue, subject to the travel restrictions imposed on Malaysians and non-Malaysians. This includes restrictions on inter-state travel and prohibition on Malaysians leaving the country during the Control Period;
- (b) the operation of cargo flights shall continue;
- (c) all ports in Malaysia shall continue to operate, save for those that handle only cruise ships; and

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- (d) the South Thai Cargo rail shall continue to operate for the delivery of Essential Items.

MOHE

The MOHE also provided that during the Control Period:

- (a) all operations at public universities and private institutes of higher education shall be shut down, save for those falling within the list of Essential Services;
- (b) all activities at such educational institutions shall be stopped; and
- (c) all students are given the option of returning to their residence (or home country) or staying back at the dormitories on campus.

3. Liability

The general offence section under the Prevention and Control of Infectious Diseases Act 1988 (referred to in our [17 March 2020 Client Alert](#)) will not apply as the Regulation has specified that non-compliance with the Regulation will attract a fine not exceeding MYR 1,000 and/or imprisonment for a term not exceeding 6 months.

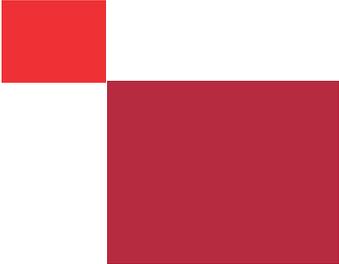
A director, manager, secretary or other similar officer and personnel responsible for managing or assisting in the management of the affairs of an offending body corporate may be charged jointly or severally with the body corporate, unless he/she can prove that:

- (a) the offence was committed without his/her knowledge, consent or connivance; and
- (b) he/she took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Management must take careful note of the restrictions and requirements prescribed under the Additional Guidelines.

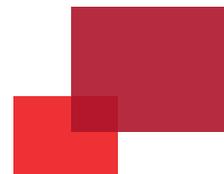
4. Conclusion

There is a possibility that the Regulation may be extended and/or amplified. Regulatory bodies will also likely be issuing further guidance and businesses should closely monitor these developments.



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Appendix 1

Manufacturing permitted to continue during the Control Period

- (a) Food and beverage items (including imported items): rice, sugar, vegetable oil and animal fats, flour and all grain products, bread, water, dairy products (such as milk and infant formula), condiments and spices, dry food, coffee and tea, canned food, meat, chicken, animal feed/livestock, processed fruits and vegetables.
- (b) Agriculture and fisheries (including imports): fish, seafood, fruits and vegetables.
- (c) Household products: detergents, disinfectants, sanitisers, personal care items, toilet paper and tissue paper.
- (d) Personal protective equipment including fire safety equipment and medical attire including face mask and rubber gloves.
- (e) Pharmaceutical: all chemicals and drugs production.
- (f) Packaging materials and printing (including ink).
- (g) Medical and surgical devices.
- (h) Parts for medical devices (such as parts for ventilators).
- (i) Oil and gas.
- (j) Petrochemicals: PTA & PET resins, polyester fibres and filaments, polypropylene and polyethylene, ABS & MABS resin, maleic anhydride, PVC paste resins, expanded EPE, impact modifiers and processing aids, styrene monomer, styrene butadiene latex and polystyrene.
- (k) Chemical and chemical products: fertiliser and pesticide.
- (l) Electrical and electronics, including semiconductors.



Appendix 2

Operating Conditions

- (a) Reduction of the number of employees to not more than 50% of the typical workforce required for the manufacturing operations. A "work from home" system must be put in place for employees who are not involved in the critical operational activities of the manufacturing plant.
- (b) The production of the manufacturing plant is meant for the domestic market only.
- (c) A list of all the employees working at the business premise/manufacturing plant during the Control Period ("**Required Employees**") must be submitted to Ministry of International Trade and Industry. The company shall ensure that the Required Employees are only travelling from their respective residence to the business premise/manufacturing plant.
- (d) The company should ensure that it has the relevant equipment to take the body temperature readings of its employees at the entry point of the factory every day. Such readings must be recorded and maintained.
- (e) Where the body temperature of such Required Employees exceeds the normal range, the company shall immediately inform the nearest health department or Government Hospital.
- (f) All Required Employees are required to comply with the guidelines issued by the Ministry of Health in respect of the Covid-19 from time to time.
- (g) The company shall make available hand sanitisers at the entrance and other relevant venues around the business premise/manufacturing plant, and ensure that the Required Employees wear face masks at all times.
- (h) The company shall be required to arrange for the business premise/manufacturing plant to be sanitised before the start of every shift, and at least 3 times a day at common spaces such as the lobby, lifts, cafeterias, meeting rooms, prayer rooms, vehicles used to transport the Required Employees and in-house recreation centres.
- (i) The company shall ensure that the vehicles for employees is sanitised each time before it is used.
- (j) The Company shall ensure that it prepares a Best Practice Guidelines on Social Distancing, which must be implemented on the production floor, cafeterias, meeting rooms, prayer rooms and multi-purpose hall.
- (k) Where any employee is found to have tested positive for Covid-19, the company shall bear all medical costs incurred by the relevant employee, the cost to sanitise the premises and all other associated costs.