

NEWSLETTER

(Updated Version 2.0)

Effects of Movement Control Order on Various Sectors



EFFECTS OF MOVEMENT CONTROL ORDER ON VARIOUS SECTORS

To curb the spread of Covid-19, the Government had on 16/3/2020 announced the Movement Control Order (“MCO”), which is put in place nationwide via Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 (“the Regulation”).

Pursuant to the announcement on 25/3/2020, the MCO has been extended to 14/4/2020 with the possibility of a further extension. In the meantime, the following are seen as the effects of MCO on various sectors thus far.

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1) MANUFACTURING SECTOR

The MCO had imposed the closure of all business premises except for essential services. While manufacturing sector in general is not essential service under the Regulation, the Government has with the purpose to ensure continuous supply of essential goods (such as rice, sugars, poultry, hygiene products, healthcare and medical products etc) announced that such manufacturers are allowed to operate, subject to fulfillment of certain conditions, including: -

- (a) prior approval by the Ministry of International Trade and Industry (MITI);*
- (b) reduction of workforce to minimal level or at least, by 50%;*
- (c) undertaking of precautionary measures in operation to prevent the spread of Covid-19 as required (such as the wearing of face masks, body temperature measurement, daily sanitization and/or any guidelines issued by the Ministry of Health in relation to the same).*

Pursuant to the recent extension of the MCO to 14/4/2020, MITI has announced that all approvals granted for operation will remain valid until 14/4/2020.

2) BANKING SECTOR

Bank Simpanan Nasional (BSN) has abolished the interest rate for Micro Credit Scheme available to micro companies. Alternatively, micro companies have the option to obtain a zero interest rate of RM10,000 loan to financially ease the company burden.

Moneylending companies, registered under the Moneylenders Act 1951, are called upon by the Prime Minister Tan Sri Muhyiddin Yassin to mimic the banks of Malaysia to provide moratorium on the loan facility repayment for the next 6 months from April 2020 onwards.

Although moneylending companies are not mandatory to provide such moratorium, it would be beneficial for all to be able to come to an agreement to ease the burden of the borrowers with the aim of being able to profit from the moneylending facilities provided.





3) COMMERCIAL CONTRACT

Business owners are having various challenges to fulfill due to the restraints imposed by the MCO. It is important to be reminded that all parties to are bound by terms of the contract [1].

To begin, one could turn to the clauses within the contract, inter alia, to determine whether there is a force majeure which allows party to be relieved from performing the contractual obligation in the event stemmed from an external factor beyond the parties control [2].

In the event the force majeure clause is exhaustive and it does not cover a scenario such as outbreak of pandemic diseases, a party may be compelled to fulfill its contractual obligations and to compensate for the damages caused should there be any failure in fulfillment of obligations [3].

[1] [2018] 3 MLJ 326 [33]
BIG Industrial Gas Sdn
Bhd v Pan Wijaya
Property Sdn Bhd and
Another Appeal

[2] [2005] 1 MLJ 311
Intan
Payong Sdn Bhd V Goh
Saw Chan Sdn Bhd

[3] [2019] 2 MLJ 1 [28]
CIMB Bank Bhd v
Anthony Lawrence
Bourke & Anor

Apart from the force majeure clause, section 57(2) of the Contracts Act 1950 ("CA 1950") provides the concept of frustration of contract where parties may be relieved from performing a contract when the obligation becomes impossible or unlawful due to event which cannot be prevented by the parties. Pursuant to the operation of section 57(2) of CA 1950, a contract will be rendered void and this would possibly aid parties to contract which does not contain the clause force majeure and who seek to terminate and/or cancel the obligation under the contract.

It is noted that the Covid-19 outbreak is a pandemic disease which affects nations and individuals global wide and parties to contract are always free to review the terms of the contract and/or to come to a consensus to modify parties' obligation to promote harmony and long-term relationship for the mutual benefits of the parties.

4) LANDLORD AND TENANT



In recognizing the difficulty suffered in the relationship of landlord and tenants, the Government has announced that property owners in the private sectors would enjoy tax deductions for the amount of discount given to the Small Medium Enterprises (SME) tenants during the Movement Control Order (MCO) period and 3 months after the MCO period.

To enjoy such tax deduction, the property owners would have to discount the SME tenants at least 30% of the rental rate from April 2020 to June 2020.

5) EMPLOYER AND EMPLOYEE RELATIONSHIP

It is generally understood that an employer is required by way of contract and/or employment law to pay salary to the employees.

It is also noted that while the Ministry of Human Resource ("MOHR") had also mentioned that salary of employees must be paid and that unpaid leaves and/or pay cut should not be forced onto the employees due to the MCO, the MOHR also recognize the employers' prerogatives in organization of respective business such as to resort to costs cutting measures such as right to retrenchment and/or lay-off, provided always that the proper steps and/or procedures are taken by the employer (e.g. genuine surplus in workforce and proper termination notice).

It is encouraged that employers resort to less drastic measures to manage costs prior to retrenchment and to obtain consent of employees in the event unpaid leave and/or salary reduction is involved.



6) GOVERNMENT ASSISTANCE

On 6th April 2020, the Government has introduced several additional assistance to ease the economy stress on companies, especially the SMEs. the Government has introduced 2 initiatives which are the Wage Subsidy Program and Special Grant PRIHATIN.

Wage Subsidy Program

Companies that employed local employees earning RM4,000 or less will be able to apply for this program and enjoy the subsidy for 3 months subject to the following conditions:

1. *Number of employees and amount of subsidy benefit*
 - (a) *For number of employees above 200, a subsidy of RM600 for each employee's salary;*
 - (b) *For number of employees 76 to 200, a subsidy of RM800 for each employee's salary;*
 - (c) *For number of employees up to 75, a subsidy of RM1,200 for each employee's salary.*

2. *Registration and Operational period*

The company eligible would have registered itself with the Companies Commission of Malaysia or any local authority and with Pertubuhan Keselamatan Sosial (PERKESO) and been operating before 1 January 2020.

3. *Continuing Employment period*

The company need to continue to employ the employees for at least 6 month after receiving such wage subsidy benefit.

Special Grant PRIHATIN

For SME micro companies, such companies, besides being applicable for the Wage Subsidy Program above, have additional benefit of RM3,000 special grant by registering with Lembaga Hasil Dalam Negeri (LHDN) to enjoy such facility.

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