
Construction

Movement Control Order - Construction Industry: Update on "Critical Works"

Introduction

The coronavirus pandemic is a global crisis. These are unprecedented times, with panic gripping the world. In Malaysia, on 16 March 2020, the Prime Minister announced the implementation of the Movement Control Order ("**MCO**") throughout Malaysia which takes effect from 18 March 2020 to 31 March 2020 ("**Restriction Period**"), as a decisive step to alleviate further escalation and spread of the Covid-19 virus.

In order to achieve the Government's purpose to arrest the spread of the Covid-19 virus, and in keeping with the MCO, only premises offering "essential services" are allowed to operate. We issued a Client Update entitled "[Movement Control Order – How Does It Affect the Construction Sector?](#)" on 20 March 2020 to provide answers to pressing questions affecting the construction industry.

Update

On 23 March 2020, the Ministry of Works ("**KKR**") issued an update to its list of Frequently Asked Questions ("**FAQ2**") in efforts to provide clarity and clear communication to address the queries affecting the construction industry arising from the implementation of the MCO.

A key highlight of the FAQ2 is that, in acknowledgment of the importance of ensuring the safety and cleanliness at the construction site during Restriction Period, KKR has revised the examples of "critical works" previously listed in its Frequently Asked Questions issued on 18 March 2020 ("**FAQ1**").

As a summary overview of the impact of the MCO on the construction industry, please note the following:

- Premises involved in the provision of "essential services" are allowed to operate during the Restriction Period.
- Construction works do not qualify as an "essential services" under the Prevention and Control (Measures Within the Infected Areas) Regulations 2020 ("**Regulations**").

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- For the construction and maintenance industry, the exceptions to the MCO are for "critical works". The KKR defines "critical works" as works which if not continued with, could cause danger and harm to workers, the public or the environment.
- KKR has revised the examples of "critical works" in the FAQ2, as follows:
 - a. Slope Repairs;
 - b. Pothole Repairs;
 - c. Traffic Management Control (TMC);
 - d. Periodical checks of lifts/travellators/escalators and other critical mechanical and electrical equipment;
 - e. Repairs of lifts/travellators/escalators and other critical mechanical and electrical equipment;
 - f. Maintenance works at premises of critical services;
 - g. Upgrading works at premises of critical services;
 - h. Traffic Light Repairs;
 - i. Construction of Bailey Bridge at location of any collapsed bridge;
 - j. Tunnelling Works;
 - k. Other emergency works as specified under the contract;
 - l. ***Maintenance, cleaning and drying of stagnant water, spraying insecticides on construction sites in order to prevent breeding of Aedes mosquitoes and other pests;*** and
 - m. Other works which if not completed would result in danger.
- In this Client Update, we highlight that works concerning maintenance, cleaning and drying of stagnant water, spraying insecticides on construction sites in order to prevent breeding of Aedes mosquitoes and other pests, have been added as "critical works" in the FAQ2 (as compared to the "critical works" as listed in FAQ1¹).
- Specifically, in respect of renovation works on business premises which are halted due to the MCO and are deemed as a security risk by reason of being incomplete, permission from KKR and the Construction Industry Development Board ("**CIDB**") must be obtained prior to resuming the renovation works².
- In respect of "critical works" as an exception to the general restriction imposed under the MCO, an application should be made with the recommendation from:
 - a. For Public Sector: Project Director or Superintending Officer; and
 - b. For Private Sector: Resident Engineer, Architect or Principal Submitting Person.

¹ See "[Movement Control Order – How Does It Affect the Construction Sector?](#)"

² FAQ published by the Ministry of Domestic Trade and Consumer Affairs on 18 March 2020

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- Upon the recommendation being obtained from the relevant party, an applicant must apply to the KKR to obtain the exemption letter. The request for the exemption letter should be addressed to such persons with the authority to grant the exemption based on their respective jurisdiction, namely:
 - a. Ketua Pengarah Kerja Raya;
 - b. Pengarah Kerja Raya Sabah;
 - c. Pengarah Kerja Raya Sarawak;
 - d. Ketua Pengarah Lembaga Lebuhraya Malaysia;
 - e. Ketua Pengarah Jabatan Pengairan dan Saliran; and
 - f. Pihak Berkuasa Tempatan atau Pihak Berkuasa Negeri.

Conclusion

Prior to the advent of the Covid-19 pandemic, the construction industry in Malaysia experienced relatively flat growth. This sluggish growth will be further aggravated by the implementation of the MCO. The construction industry is expected to face significant difficulties, where the risks extend beyond disruptions to the supply chain due to the highly integrated nature of the industry with the workforce.

A typical concern raised during such periods of disruption is the ability of an affected party to delay the progress of the works or suspend the performance of contractual obligations due to the Covid-19 pandemic and/or due to enforcement of any law, regulation or by-law, or any order or directive issued by any public authority and/or public service company which affects the works at the project sites. For a more comprehensive discussion of these concerns, kindly refer to our Client Update entitled "[Movement Control Order – How Does It Affect the Construction Sector?](#)" issued on 20 March 2020.

In recognition of the contractions to the economy of Malaysia caused by the pandemic, the Government is making concerted efforts to provide better clarity to address the anxiety of its people. The priority is channelled to first assist the people on a needs basis, regardless of the sector of their employment.

We are in this trial together, and we at Christopher & Lee Ong remain committed to assist our clients to navigate the uncertainties brought about by the MCO. Get in touch with us at the contact details specified below.

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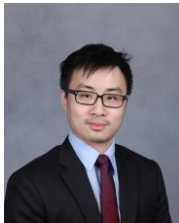
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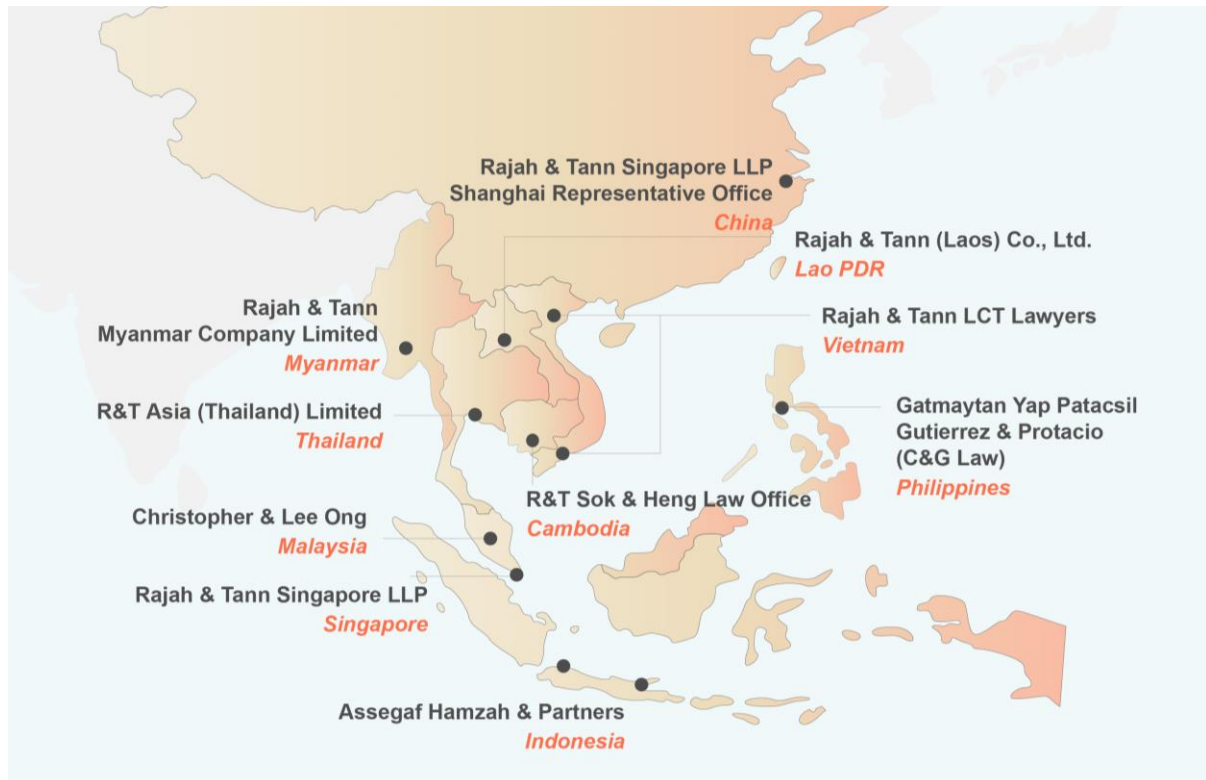
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