

The Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Regulations 2020 – Containing the COVID-19 Outbreak in Malaysia

Introduction

Following a sharp increase in the number of persons infected by the COVID-19 virus, the Government has gazetted the Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Regulations 2020 (“**Regulations**”). The Regulations are to have effect from 18 March 2020 to 31 March 2020 (“**Restriction Period**”). This followed the announcement by the Prime Minister’s Office (“**PMO**”) on 16 March 2020 of a Movement Control Order, which according to the announcement, will be enforced under the Prevention and Control of Infectious Diseases Act 1988 (“**PCID Act**”) and the Police Act 1967 (“**Police Act**”).

The Regulations were issued subsequent to the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 which declared all states and federal territories of Malaysia as infected local areas (“**Declaration Order**”).

Coverage of the Regulations

Control of Movements

By Regulation 3 of the Regulations, no person shall make any journey from one place to another within any infected local area except for the following purposes:

- to perform any official duty;
- to make a journey to and from any premises providing essential services;
- to purchase, supply or deliver food or daily necessities;
- to seek healthcare or medical services; or
- such other special purposes as may be permitted by the Director General of Health.

Further, the Regulations also restrict movement between one infected area to another, unless the prior written permission of a police officer is obtained. We are still anticipating further guidance from the Royal Malaysia Police on the relevant procedures to obtain the travel permission.

Premises Providing Essential Services

The Movement Control Order provides that all government and private sector premises will be closed, with the exception of premises involved in the provision of essential services.

The Regulations further refine this restriction to allow any premises providing essential services to be opened as long as the number of personnel and patron at the premises is kept to a minimum number. Essential services are defined to be:

- banking and finance;
- electricity and energy;
- fire;
- port, dock and airport services and undertakings, including stevedoring, lighterage, cargo handling, pilotage and storing or bulking of commodities;
- postal;
- prison;
- production, refining, storage, supply and distribution of fuel and lubricants;
- healthcare and medical;
- solid waste management and public cleansing;
- sewerage;
- radio communication including broadcasting and television;
- telecommunication;
- transport by land, water or air;
- water;
- e-commerce;
- defense and security;
- food supply;
- wildlife;
- immigration;
- customs;
- hotels and accommodations; and
- any services or works determined by the Ministry of Health as essential or critical to public health or safety.

(collectively, “**Essential Services**”)

Any premises involved in food supply chain or selling food and beverages may continue to operate by way of drive-through, take away and delivery only, subject to any conditions imposed by the Director General of Health.

For premises which are not providing Essential Services, such premises may only be opened with the prior written permission of the Director General of Health.

The National Security Council has also issued a press statement with further guidance on the operations of Essential Services and certain non-Essential Services. Some key takeaways include:

- administrative functions and ancillary support to Essential Services to be operated remotely;
- no visitation to prisons allowed;
- alternative medicine providers are not allowed to operate;
- no visitation at hospitals, save for critical cases based on the guidelines by the Ministry of Health;
- counter service for telecommunication operators will not be available;
- restriction on sale of supplies per household; and
- recreational facilities within hotel services (such as swimming pool, bar, gym or restaurant) are not allowed to operate.

Restriction on Gatherings

The Regulations implement a complete prohibition of any gathering within Malaysia whether for religious, sports recreational, social or cultural purposes. However, funeral ceremonies with minimal number of attendees may still be held.

Health Examination upon Arrival in Malaysia

All citizens and permanent residents in Malaysia returning from overseas shall undergo health examination upon arrival in Malaysia before proceeding for immigration clearance at any point of entry.

Other Powers under the PCID Act to Control Infectious Diseases

Aside from the Declaration Order and the Regulations made pursuant to the PCID Act, Section 11(3) of the PCID Act accords wide powers to any authorised officer¹ to direct any person or class or category of persons living in an infected local area to be subjected to other measures considered necessary to control the infectious disease. The Royal Police Malaysia and the Volunteers Department of Malaysia (RELA) have been appointed as authorised officers under the PCID Act. Please note that it shall be lawful for an authorised officer to use such force, with or without assistance, as may be necessary and to employ such methods as may be sufficient to ensure compliance with any direction issued under Section 11(3) of the PCID Act.

¹ means any Medical officer of Health, any health inspector, or any officer appointed by the Ministry of Health under Section 3 of the PCID Act

Consequences of Non-Compliance

Please note that any person who does not comply with the Regulations commits an offence and shall on conviction be liable to a fine of not exceeding RM 1,000 or to imprisonment for a term not exceeding 6 months or to both.

Any person who refuses to comply with any direction by an authorised officer appointed pursuant to the PCID Act is also guilty of an offence and if convicted for the first time, may be liable to imprisonment for a term not exceeding 2 years or to a fine or to both. Subsequent offences will attract higher penalties.

In addition to the penalties under the Regulations and the PCID Act, Section 20 of the Police Act provides that every police officer may take lawful measures to, amongst others, give assistance in carrying out the law relating to quarantine and immigration. Any person who obstructs a police officer in the discharge of his public functions commits an offence and shall on conviction be liable to imprisonment for a term which may extent to 2 years or a fine which may extend to RM 10,000, or both.

Commonly Asked Questions

Will all government offices continue to operate?

Only the ministries or departments involved in Essential Services will continue to operate. The Companies Commission of Malaysia, courts of Malaysia, certain land offices and the Inland Revenue Board have announced disruptions in their operations during the Restriction Period. The Ministry of International Trade & Industry and its agencies will operate remotely during the Restriction Period, save for certain functions which will be delivered through conventional means, such as endorsement of Certificates of Origin (COO).

Due to the shortage of supplies, are there any price restrictions on essential goods?

Businesses are reminded to continue to ensure that the pricing of their products remain compliant with the provisions under the Price Control and Anti-Profiteering Act 2011 (“PCAP”), in particular, to ensure that no increase in price is made to the extent where the mark-up percentage or margin percentage of their products at this time will exceed the mark-up percentage or margin percentage of their products at the start of the financial year/calendar year. This is in line with the requirements under the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018.

Specifically on the sale of face masks, the Price Control (Fixing of Maximum Price) (No. 2) Order 2009 has prescribed the maximum price for 5 types of face masks:

No.	Goods	Maximum Price (RM)	
		Wholesale	Retail
1.	Face mask (surgical/medical) 1 ply (ear loop)	5.00 per box	7.00 per box
2.	Face mask (surgical/medical) 2 ply (ear loop)	8.00 per box	10.00 per box 0.20 per unit
3.	Face mask (surgical/medical) 3 ply (ear loop/ head loop)	25.00 per box	0.80 per unit

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No.	Goods	Maximum Price (RM)	
		Wholesale	Retail
4.	Face mask (surgical/medical) 3 ply (tie-on)	30.00 per box	0.80 per unit
5.	Face mask (surgical/medical) N95	100.00 per box	6.00 per unit

Can employees still enter the premises of non-Essential Services Companies?

Any premises which are not providing Essential Services may only be opened with the prior written permission of the Director General of Health. The Regulations only permit movements from one place to another within infected local areas for very limited purposes. Movements from one infected local area to another require the written permission of the police (pending further guidance from the Royal Malaysia Police).

Even though it is not clear whether non-Essential Services providers are required to restrict access to the extent that no employees are permitted to be at the business premises at all during the Restriction Period, what is clear is that the Movement Control Order and the Regulations are put in place to contain the spreading of COVID-19. Such being the case, unless the non-Essential Services providers have valid justifications to allow their employees to enter the business premises which are otherwise closed pursuant to the Movement Control Order and the Regulations, they should not allow such entry.

What happens if employees exhibit COVID-19 symptoms while working during the Restriction Period?

The Department of Labour of Peninsular of Malaysia ("**Labour Department**") has issued guidelines on 7 February 2020 and 16 March 2020 concerning issues with the spread of COVID-19 at the workplace ("**JTK Guidelines**") which will be applicable to employees that are able to work (on-site or remotely) during the Restriction Period.

The JTK Guidelines provide that:

- employers must allow employees who are confirmed to be exhibiting COVID-19 symptoms to utilise their sick or hospitalisation leave throughout their treatment period in the hospital;
- if employees (who are working on-site) are subject to quarantine or home surveillance orders, employers are not allowed to force employees to use their annual leave during the relevant period;
- employers are also not allowed to prohibit employees from coming to work (where applicable) if they are not issued with a quarantine or home surveillance order by a registered medical practitioner. However, employers can instruct their employees who are unwell to be absent from work and allow them to utilise their paid sick leave entitlement; and
- if an employee exceeds his sick or hospitalisation leave entitlement during the quarantine or home surveillance period, employers are encouraged to provide additional payment to them.

Do note that the employer's obligations relating to sick and hospitalisation leaves under the JTK Guidelines should apply to employees who are working remotely during the Restriction Period.

Can employers compel employees to take unpaid leave if they are not working during the Restriction Period ?

Some employers affected by the Movement Control Order and the Regulations may have to cease operations of their business during the Restriction Period due to the lack of remote access infrastructure or the general nature of their business. In such cases, it is unclear as to whether employers are required to pay their employees throughout the Restriction Period or if employees are required to take unpaid leave.

Forcing an employee to take unpaid leave could amount to a unilateral amendment to his/her employment contract. This may lead to a claim of breach of contract and/or constructive dismissal. Consent of the employees should ideally be obtained if unpaid leave arrangements are to be imposed during the Restriction Period. Communication with the employees therefore plays a pivotal role in managing the matter.

On 16 March 2020, the PMO announced that it will provide financial assistance of RM 600 to employees earning less than RM 4,000 a month who are forced to take unpaid leave, for a maximum of 6 months from 1 March 2020 onwards (“**FA Announcement**”).² This FA Announcement indicates that unpaid leave during the Restriction Period is possible, provided it is done in good faith as part of positive steps to avert reductions of the workforce.³

Can employers compel employees to utilise annual leave during the Restriction Period?

As the JTK Guidelines prohibit employers from forcing employees to utilise their annual leave during quarantine or home surveillance, the same rationale may apply to the Restriction Period. Do note that the JTK Guidelines do not have statutory force and were not issued to address employment issues arising from the Movement Control Order or the Regulations. Nevertheless, the JTK Guidelines can be considered by the Courts in determining dismissal claims. Employers are therefore encouraged to obtain the consent of their employees before any arrangement on their leave entitlements is imposed.

What if an employee refuses to report to work due to concerns over the COVID-19 outbreak for businesses carrying on Essential Services?

The employee is allowed to be absent from work only if the employee has applied for annual leave in accordance with the terms of his/her employment contract. If the employee failed to make the necessary applications to be absent from work or to produce a valid medical certificate to be entitled to medical leave, the employee will be considered as being absent from work without valid reasons and may be subject to disciplinary proceedings.

² <https://www.pmo.gov.my/2020/03/mesyuarat-majlis-tindakan-ekonomi-bil-1-2020/>

³ Code of Conduct for Industrial Harmony

For non-Essential Services, can an employer compel its employees who do not have the necessary facilities to work from home to be based in the office?

No. Employers will be in breach of the Regulations for allowing the business premises to operate outside the permissible limits of the Regulations, and without the prior written permission of the Director General of Health.

Can Malaysian citizens commute to neighbouring countries for work?

Based on the press statement released by the National Security Council on 18 March 2020, Malaysian citizens working in Singapore, Thailand, Brunei and Indonesia shall not be allowed to commute between jurisdictions for work during the Restriction Period.

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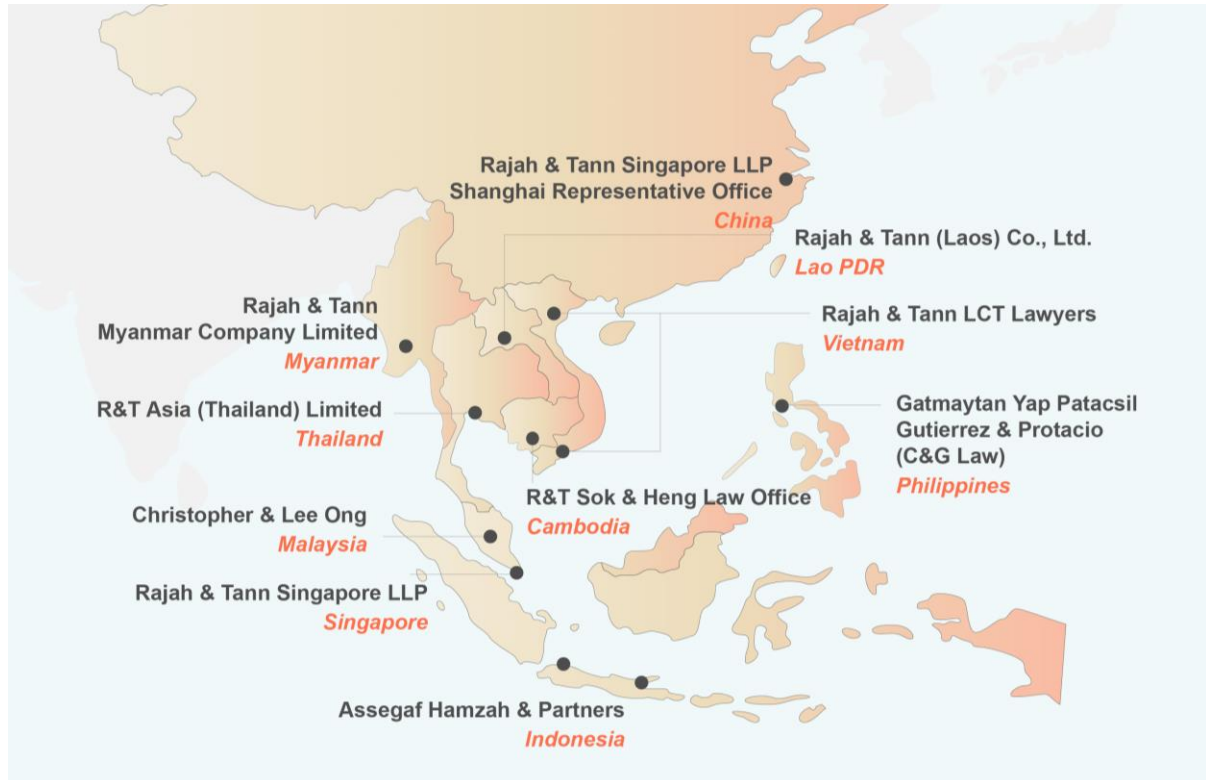
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