

# Movement Control Order (Extended) – the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) (No. 2) Regulations 2020

## Introduction

On 25 March 2020, the Prime Minister's Office announced that the movement control order ("**MCO**") will be extended by two weeks to 14 April 2020. Following that announcement, the Government gazetted the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) (No. 2) Regulations 2020<sup>1</sup> ("**MCO2 Regulations**") which are to be effective for the period of 1 April 2020 to 14 April 2020 ("**Extended MCO Period**").

Whilst the provisions of the MCO2 Regulations contain similarities to those set out in the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations 2020 ("**MCO1 Regulations**") for the initial MCO period, there are additional conditions imposed and variations to the definition of essential services under the MCO2 Regulations.

Following the gazetting of the MCO2 Regulations, the National Security Council ("**MKN**") released FAQs on 2 April 2020 and 3 April 2020 ("**FAQ**") to provide clarifications on the MCO2 Regulations.

## Variation to the List of Essential Services

The MCO2 Regulations have expanded the definition of "essential services" to include **any activity and process in the supply chain of the services** listed in the schedule of the MCO2 Regulations. Whilst the MCO2 Regulations and the FAQ did not provide further explanation or parameters to 'activity or process in the supply chain of the essential services', the expansion of the definition of essential services allows room for businesses which support essential services to operate during the Extended MCO Period, which is something that was not addressed in the MCO1 Regulations.

The MCO2 Regulations has also revised the list of essential services to the following (collectively, "**New Essential Services**"):

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<sup>1</sup> Further amended by the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) (No. 2) (Amendment) Regulations 2020 gazetted on 3 April 2020.

- food;
- water;
- energy;
- communication and internet;
- security and defence;
- solid waste and public cleaning management and sewerage;
- healthcare and medical including dietary supplement;
- banking and finance;
- e-commerce;
- logistics confined to the provision of essential services
- transportation by land, water or air;
- port, dock and airport services and undertakings, including stevedoring, lighterage, cargo handling, and pilotage, and storing or bulking of commodities;
- production, refining, storage, supply and distribution of fuel and lubricants;
- hotels and accommodation; and
- any services or works determined by the Minister as important or critical to public health and safety.

Whilst the list of New Essential Services has excluded services such as postal, fire, immigration and customs services that were in the list of essential services under the MCO1 Regulations, the FAQ issued by MKN has clarified that such services would still be allowed to continue operations as they fall within the supply chain of the New Essential Services. Some examples given are that postal services will fall within the heading of "communications", whereas fire, immigration and customs will fall within the heading of "security and defence".

The FAQ also clarified that businesses which previously obtained approval to operate throughout the initial MCO period may continue to operate insofar as they fall within the categories of the New Essential Services or within the supply chain of the New Essential Services. The FAQ reiterates that the conditions that were placed on operations and were applicable throughout the initial MCO period will continue to apply throughout the Extended MCO Period.

In line with the above, the Ministry of International Trade and Industry ("**MITI**") and the Ministry of Domestic Trade and Consumer Affairs ("**MDTCA**") confirmed that businesses which were granted exemptions or approvals to operate during the initial MCO period by MITI and MDTCA may continue to operate throughout the Extended MCO Period.

MKN further provides that all workplaces shall implement the following precautionary measures:

- social distancing of at least one metre;
- temperature checks before being allowed to enter the workplace;

- single entry and exit points; and
- closure of the workplace canteen.

## **Additional Conditions**

### **Conditions for movement**

Regulation 4 of the MCO2 Regulations incorporates into law certain conditions placed on movement which were not in the MCO1 Regulations but were implemented through announcements made by the Government during the initial MCO period. These include:

- restricting the movement of persons from one place to another within any infected local area or between local infected areas; and
- restricting movement to a 10-kilometre radius of a person's place of residence ("**10KM rule**"), and only for purposes of (i) purchasing food, daily necessities, medicine or dietary supplement; or (ii) seeking healthcare or medical services ("**Essential Needs**").

Persons travelling for Essential Needs must not be accompanied by any other person, unless it is reasonably necessary for that person to be accompanied. What amounts to "reasonably necessary" was not provided under the MCO2 Regulations or the FAQ.

The 10KM rule does not apply to persons travelling to perform official duties or duties in relation to essential services. For persons travelling to perform official duties or duties in relation to essential services, he/she must be able to produce an authorization letter from his/her employer if required by the Royal Malaysia Police or RELA ("**Authorised Officer**").

MKN explained in the FAQ that an enhanced Movement Control Order may be enforced in certain areas for a period of two weeks from the date of declaration as a designated area. Declaration of a designated area will be determined based on the advice of the Ministry of Health in the event of a spike in the number of COVID-19 cases within the area. Where an area is subject to an enhanced Movement Control Order, all movements are prohibited and all business premises shall be closed, with certain exceptions.

### **Movement to carry out works on infrastructure**

By Regulation 7 of the MCO2 Regulations, movement is also permitted for the purpose of carrying out works on infrastructure where, if the works are not carried out, it would affect the provision of the essential services or the safety and the stability of the infrastructure. Where a person is travelling for the foregoing purposes, he/she must be able to produce the necessary proof as required by an Authorised Officer.

### **Designated timings for movement and business operations**

Based on the FAQ, MKN has restricted movement of persons to the following timings:

- movement by private/individual-owned cars shall only take place between 6am to 10pm;
- movement by public transport shall only take place between 6am to 10am and 5pm to 10pm;
- movement by commercial vehicles shall only take place between 7pm to 7am; and
- movement by taxi or e-hailing vehicles shall only take place between 6am to 10pm.

Further, the permitted operating hours of businesses selling daily necessities and food, including food deliveries, is restricted to the hours between 8am to 8pm.

### **Consequences of Non-Compliance**

Any person who does not comply with the MCO2 Regulations commits an offence and shall, on conviction, be liable to a fine of not exceeding RM1,000 or to imprisonment for a term not exceeding 6 months or to both.

Where an offence is committed by a company, a person responsible for the management of the company ("**Management Personnel**") at the time of the commission of the offence may be charged severally or jointly in the same proceedings with the company. For the purpose of the MCO2 Regulations, persons responsible for the management of the company includes but is not limited to directors, compliance officers, managers and secretaries.

Upon conviction of a company, the Management Personnel shall be deemed to be guilty of the same offence and shall be liable to the same punishment or penalty as an individual, unless the Management Personnel proves that (i) the offence was committed without his/her knowledge; and (ii) that the offence was committed without his/her consent or connivance and that he/she had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

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