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Movement Control Order 2.0 and the Emergency Declaration — How Do They Affect Your Business?

In view of the increasingly high number of COVID-19 infections in Malaysia, which continues to see four-digit daily increases, the Prime Minister announced the implementation of the second Movement Control Order (**MCO 2.0**) in line with s 11 of the Prevention and Control of Infectious Diseases Act 1988 (**PCIDA**). MCO 2.0 is, however, only imposed on the states of Johor, Melaka, Penang, Sabah and Selangor, as well as the Federal Territories of Kuala Lumpur, Putrajaya and Labuan, and takes effect from 13 January to 26 January 2021 (**MCO Period**).

Upon being satisfied that the pandemic poses a grave threat to the security, economic life and public order of the country, the Yang di-Pertuan Agong declared a state of emergency pursuant to Art 150 of the Federal Constitution as announced by the Prime Minister. The emergency period is to take effect from 11 January until 1 August 2021 (**Emergency Period**).

During the Emergency Period, the government vis-à-vis the Cabinet and the respective State Executive Councils shall function as usual, subject to any ordinance proclaimed by His Majesty from time to time. Additionally, an independent special committee will be established pursuant to an ordinance, which will be tasked to advise His Majesty on, *inter alia*, whether the Emergency Period should be extended or terminated. From the aspect of business operations, it was clarified that economic activities will continue to function as usual, subject to the MCO 2.0 standard operating procedures (**MCO 2.0 SOPs**).

Following the implementation of MCO 2.0, the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (Movement Control) Regulations 2021 were passed on 12 January 2021 (**MCO 2.0 Regulations**). Under these regulations, movement within an infected local area, or from one infected local area to another is limited, and shall only be permitted in certain circumstances including, *inter alia*, to purchase daily necessities, to provide or procure any essential services or

perform any duty in relation to any essential services, and to carry out works on any infrastructure related to any essential services or to carry out any works on any infrastructure which would affect the safety and stability of the infrastructure. Aside from this, any movement from one place to another place within any infected local area or from one infected local area to another shall be subject to the prior written permission of the police.

“Essential services” are defined as the services set out in the Schedule to the Regulations, and any activity and process in the chain of such essential services. Under the Schedule, essential services are as follows:

- (1) **Manufacturing and production**, such as, *inter alia*, food and beverage, goods for packaging and printing for food and medical industries, electrical and electronic goods;
- (2) **Services**, such as, *inter alia*, financial services, telecoms and digital infrastructure, e-commerce, professional services (e.g. accountants, lawyers, engineers);
- (3) **Construction**, such as, *inter alia*, critical maintenance and repair works, building construction works that provide complete workers accommodations on construction sites;
- (4) **Distribution trading**, such as warehousing and logistics, sales and delivery of food and beverages, retailing, distribution and wholesaling;
- (5) **Farming and Commodity**, such as agriculture, fisheries and husbandry, farming and commodity; and
- (6) Other service, work, industry or business as determined by the Minister of Health after consulting the authority that regulates the service, work, industry and business.

Further, an authorised officer (defined under s 2 of the PCIDA as any Medical Officer of Health, any health inspector, or any officer appointed by the Minister of Health) may direct any employer who employs a foreign employee to cause the foreign employee to undergo a COVID-19 detection test whereby the employer shall bear the fee, cost or charges for the test. In this regard, affected employers may wish to refer to the [Prevention and Control of Infectious Diseases \(Fee for Coronavirus Disease 2019 \(COVID-19\) Detection test\) Regulations 2020](#) as amended on [28 July 2020](#) and [31 December 2020](#).

In addition to the MCO 2.0 Regulations, businesses are also required to observe the directions set out by the Ministry of International Trade and Industry (**MITI**) and the MCO 2.0 SOPs as issued by the National Security Council (**NSC**) throughout the MCO Period. Pursuant to a [press release](#) and a [Frequently Asked Questions \(FAQs\)](#) sheet published on 12 January 2021, MITI has provided that:

- (1) certain businesses, namely companies in the industrial and manufacturing sectors under the purview of MITI, are required to register with MITI via a platform known as the COVID-19 Intelligent Management System (CIMS);

- (2) only 30 per cent of employees in the management group (which includes those carrying out functions involving accounting, finance, administration, legal, planning, ICT and other relevant functions) of companies in essential services are allowed at the workplace, whereas the number of other staff allowed will be determined by the employers taking into account strict compliance with the SOPs;
- (3) persons travelling inter-state and inter-district for work purposes must carry an employment pass or an authorisation letter from their employer; and
- (4) businesses not listed as an essential service must allow their employees to work from home.

The NSC has also published several SOPs that must be complied with during the MCO Period. These include the [General SOPs for the MCO](#); [the SOPs for the Industrial and Manufacturing sectors](#) and [the SOPs for the Professional Services sector](#), which expand on the regulations under the MCO 2.0 Regulations as set out above. Businesses are to comply with the MCO 2.0 Regulations as well as the SOPs during this period, as any contravention of the MCO 2.0 Regulations or any directions of the Health Director General or an authorised officer shall amount to an offence punishable by a fine not exceeding RM1,000 or to imprisonment for a term not exceeding six months, or both.

It would appear that the implementation of MCO 2.0 is generally less stringent as compared to that of the first MCO on 18 March 2020, as the list of essential services provides a wider array of industries and sectors that can operate during the MCO Period. However, it remains to be seen if any ordinances promulgated by the Yang di-Pertuan Agong pursuant to His Majesty's powers under the Federal Constitution in the coming months would have any impact on businesses and economic activities.

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