



COVID 19 - MALAYSIA UPDATE

Operational / Employment Perspective - 8 things aviation and other business operators should know about the Movement Control Order (“MCO”)

On 10 April 2020, Malaysia’s Prime Minister announced that the country’s movement curbs would be extended to 28 April 2020, in a bid to continue its effort to flatten the COVID 19 curve as the infection numbers have yet to plateau. It is envisaged that the MCO may be extended further if the number of new cases continues to soar.

1. Do employers have to close their businesses / premises during the MCO period?

In general, only those providing “essential services” are allowed to operate during the MCO period. Certain “non-essential services” may be allowed to operate on the condition that an approval from the authorities is obtained.

2. What constitutes “essential services”?

The list of essential services can be found in the Government Federal Gazette This encompasses food, water, energy, communications and internet, security and defence, solid waste and public cleansing management and sewerage, healthcare and medical including dietary supplement, banking and finance, e-commerce and logistics confined to the provision of essential services.

3. Are employers required to pay the same salary or benefits during the MCO period?

Yes. A guideline has been issued by the local authorities to the effect that full salary and allowances of employees should be paid during the MCO period.

4. Can employees be asked to take annual and / or unpaid leave during the MCO period?

Employers cannot compel an employee to take annual and / or unpaid leave unless it is agreed by the employee.

5. How would the MCO impact on employees who are currently on maternity or sick leave?

Such overlap is unlikely to have any impact on employees’ maternity / sick leave entitlements.

6. Can employers retrench and/or temporarily lay-off employees during the MCO period?

Employers struggling to keep their heads above water and facing financial difficulties may find it necessary to undertake retrenchments to stay afloat in order to ride out the COVID 19 storm. Such drastic measures should only be taken in accordance with the applicable principles of industrial law and / or the Employment Act 1955 (for employees covered by the same).

7. Applicability of the doctrine of frustration and / or force majeure

This hinges on the provisions of the contract of employment in place between the parties. In general, in order for these doctrines to be successfully invoked, the MCO will have to be regarded as constituting a prolonged period of time, sufficient to render the performance of the contract of employment impossible.

8. Offences

Failing to comply with the MCO is an offence, and those who flout the MCO measures may face criminal liability.

Key Takeaway

We suggest that all companies and organisations with operations and employees in Malaysia ensure that they comply with all government regulations.

For specific queries in relation to the impact of the MCO on your business and / or to know more about our commercial offering in the Asia-Pacific region, please feel free to contact Terence, or speak to your usual contact at HFW.

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