



# COVID-19 AND THE MOVEMENT CONTROL ORDER: CRITICAL WORKS

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# CLIENT ALERT: COVID-19 AND THE MOVEMENT CONTROL ORDER: "CRITICAL WORKS"

## INTRODUCTION

The Prime Minister Tan Sri Muhyiddin Yassin on 16 March 2020 had announced the Movement Control Order ("MCO") to be implemented starting from 18 March 2020 to 31 March 2020. On 25 March 2020, the Government of Malaysia has extended the MCO to 14 April 2020 to curb the spread of the Covid-19 infection in Malaysia.

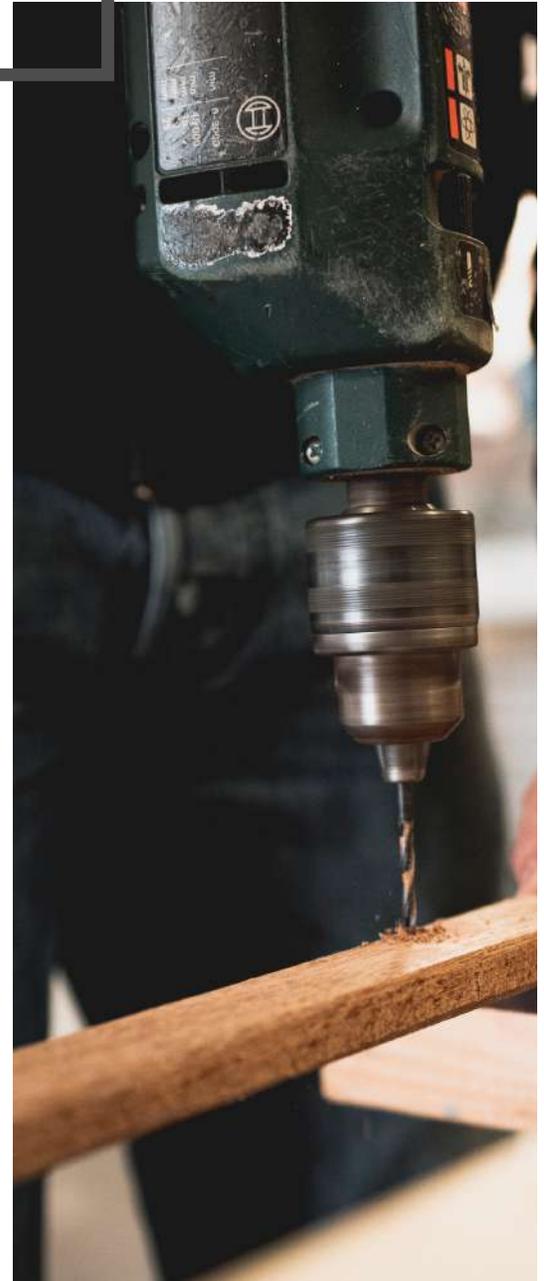
Following from that directive, all public and private premises will be closed except for Essential Services. "**Essential Services**" means the services as specified under the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 (P.U. (A) 91).

The MCO has impacted national commerce and has affected contracting parties in the performance of their obligations. The Malaysian construction industry has not been spared.

## CRITICAL WORKS

On 18 March 2020, the Ministry of Works of Malaysia ("**KKR**") issued a list of Frequently Asked Questions ("**FAQs**") to address a stop-work order due to the MCO and to clarify on the performance of contractors' obligations under the construction and maintenance contracts in view of the cessation.

Pursuant to the FAQs, the construction sector is bound by the MCO. Therefore, all construction and maintenance works will have to be stopped except for "critical works".



The term “**critical works**” under the FAQs is defined as any works which if not continued, will create danger or harm to workers, the public or the environment. Examples of critical works provided under the FAQs are as follows:

(a) hill slope repairs;

(b) pothole repairs;

(c) Traffic Management Control (TMC);

(d) periodical inspection of lifts/travellators/escalators and any other critical mechanical or electrical equipment;

(e) repairs of lifts/travellators/escalators and any other critical mechanical or electrical equipment;

(f) maintenance works at premises of critical services;

(g) upgrading works on facilities at premises of critical services;

(h) traffic light repairs;

(i) construction of Bailey bridges at location of any collapsed bridge;

(j) tunneling works;

(k) other emergency works as specified under contract; and

(l) other works which if not completed would result in danger.



## RECOMMENDATION REQUIRED

It is pertinent to note that works falling within the definition of critical works will have to be approved before they are carried out during the MCO.

Contractors intending to conduct the critical works will first have to obtain the recommendation from the relevant personnel:

(a) project director (authorised representative) or enforcement officer for Government projects;

(b) resident engineer or principle submitting person for private projects.

Upon obtaining the recommendation, an application for exception can be made by extending the recommendation to the relevant jurisdictional authority under the contract:

(a) *Director General of the Public Works Department;*

(b) *Director of Public Works Department Sabah;*

(c) *Director of Public Works Department Sarawak;*

(d) *Director General of the Malaysian Highway Authority;*

(e) *Director General of the Department of Irrigation and Drainage; and*

(f) *Local government authority or State authority.*

## CLAIMS

According to the FAQs, the Government will not be held responsible for any claims for losses by the contractors due to the implementation of the MCO as the Covid-19 outbreak is an event beyond the control of the Government.

In relation to projects that are affected by the implementation of the MCO, any extension of time will only be permissible in accordance with the contracts.



## CONCLUSION

Contractors are advised to engage with the Government's or employers' authorised representatives under their contracts should there be a need to conduct any of the critical works or if there is any concern with regards to the safety of the public or environment arising from their ongoing projects. Care should be taken to ascertain if a particular construction or maintenance work is indeed deemed as a critical work.



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