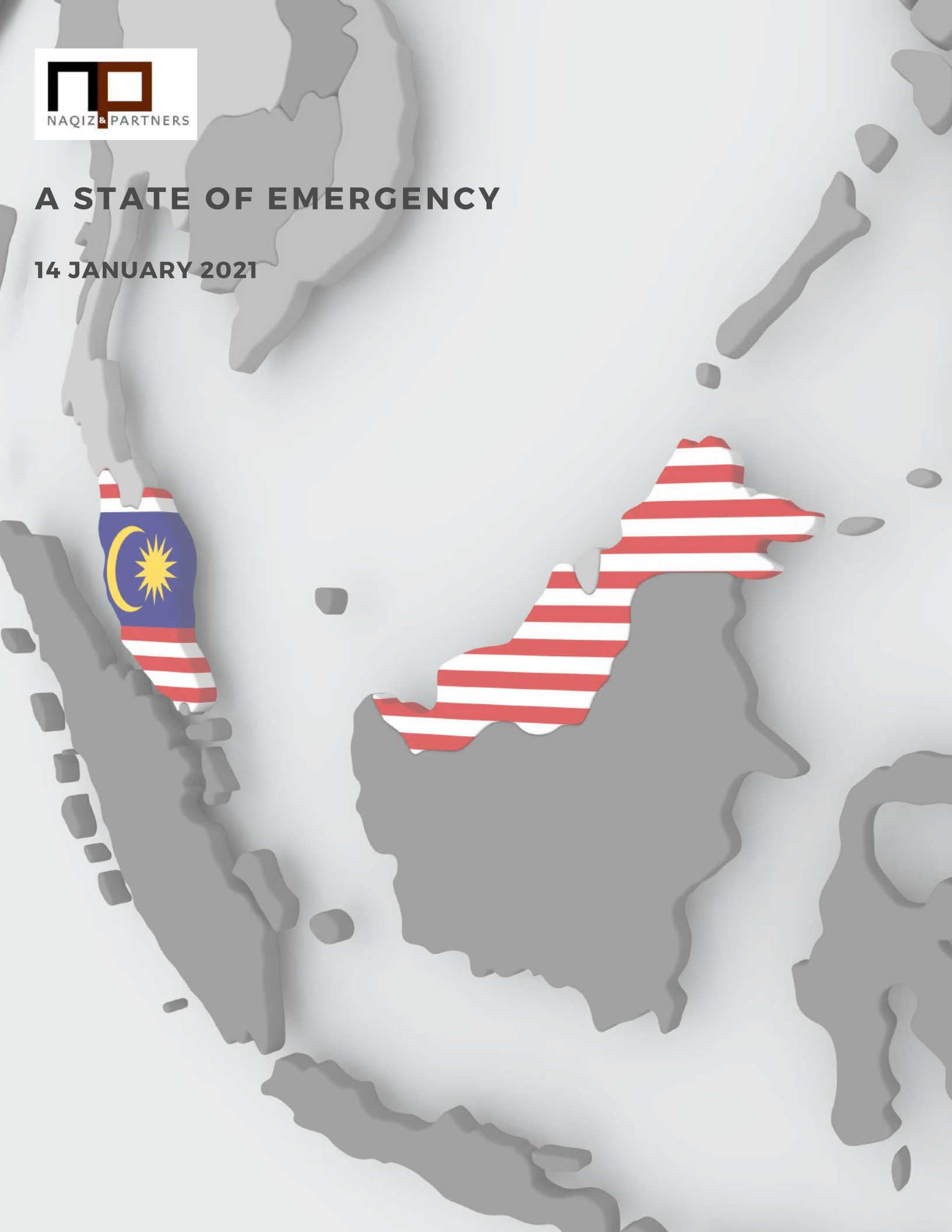




A STATE OF EMERGENCY

14 JANUARY 2021



CLIENT ALERT: STATE OF EMERGENCY IN MALAYSIA



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A year has passed and the united war against Coronavirus rages on. The numbers of daily cases in Malaysia have escalated to thousands in the past few months, with a whopping 3,309 cases recorded just recently.

The news of the distribution of vaccines provides hope as we witness the uprising trend and the healthcare system being overwhelmed.

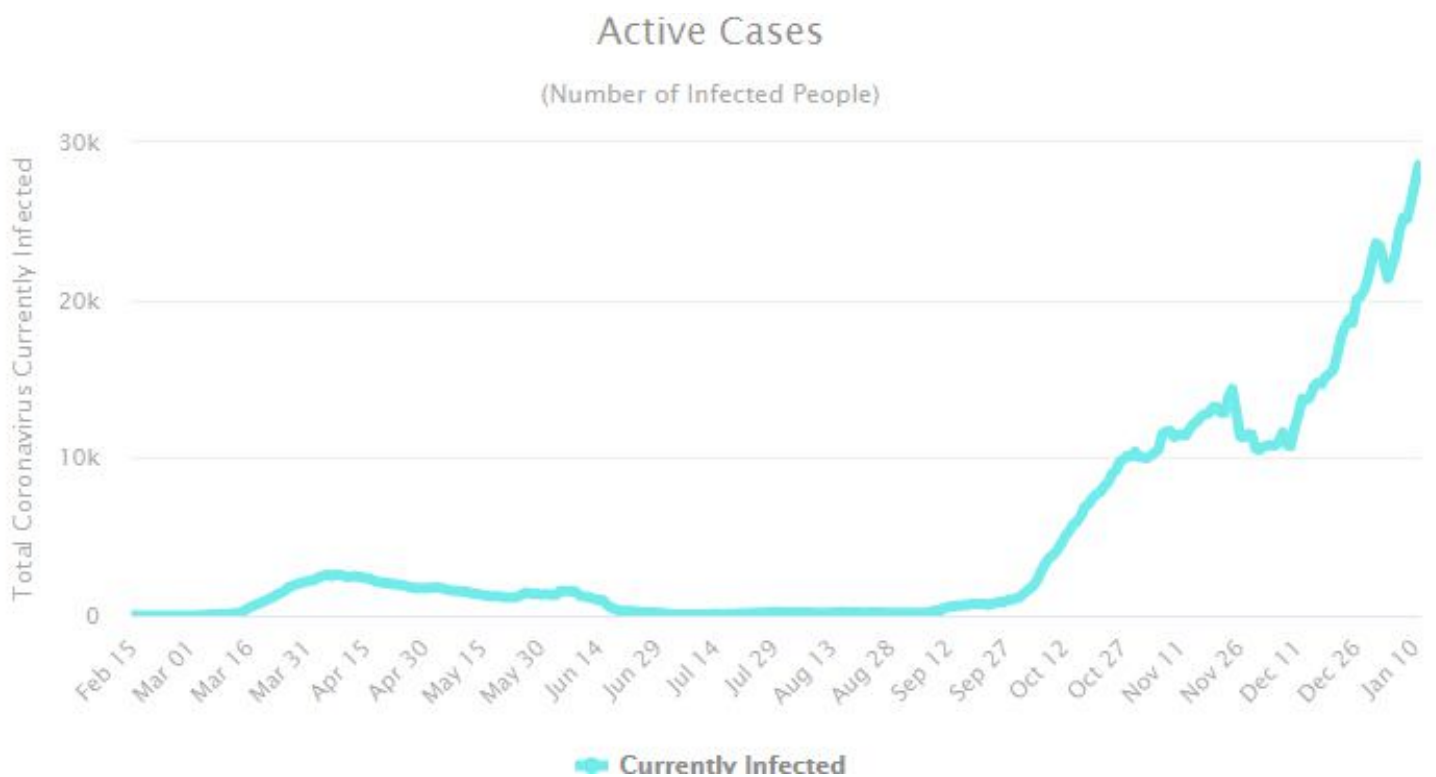


Figure 1 Number of Covid-19 infections in Malaysia
Source 1: worldometers.info

This newly imposed two-week Movement Control Order (MCO) on five states and three Federal Territories is seen as a circuit breaker with a possibility of an extension if the current situation does not improve. The MCO was followed up by a Proclamation by the Yang di-Pertuan Agong of a State of Emergency which will last until 1 August 2021.

A. AN EMERGENCY?

It has been over 50 years since the last emergency was declared in Malaysia, so it is not uncommon for most to not know what it means and what it actually entails. This simple word can be alarming to many, as it brings about insidious connotations that signifies that the country is in distress and can create panic if not properly informed.

i. Factors to declare an emergency

The pandemic has adversely impacted public health, livelihood and businesses. The economic and social disruption is devastating. The Malaysian Government is also having to deal with floods in the East Coast and Southern State of Johor which have wreaked havoc to many homes and families.

In light of these circumstances, the King had deemed fit to approve the emergency powers provided for under the Constitution as a “proactive move to control and flatten daily Covid-19 cases”. This is in line with the powers given in Article 150(1) of the Federal Constitution that an emergency can be declared if a grave emergency which threatens the security, economic life or public order exists, and in which cannot be handled through the regular administration system.

ii. Power for the YDPA to make Ordinances

According to Article 150(2B) of the Constitution, the Proclamation of Emergency will provide the King with special powers to make decrees, known as Ordinances, for any given matter as he sees fit and necessary without going through the tedious process of passing a normal legislative Bill. While the power to make such Ordinances also extend to the Parliament with some restrictions given in Article 150(5) of the Constitution, the Prime Minister announced that the Parliament and State Legislative Assemblies will not sit until further notice.

In a State of Emergency, the King has the power to issue decrees upon the advice of the Prime Minister. Such power must be handled with care to fulfil the intended objectives, and as explained by the Prime Minister in his speech, the power for the King to issue decrees will be very helpful to combat the worsening pandemic, which in this instance, includes but are not limited to:

(a) The temporary request to use private hospital’s land, buildings and resources to treat Covid-19 patients to reduce the burden from the government hospitals which are severely overwhelmed at the moment;

(b) The increase in penalties or punishments to anyone who flouts the law and rules related to the control of the pandemic under the Prevention And Control Of Infectious Diseases Act 1988;

(c) Fighting economic sabotage, monopoly and excessive increase of prices in goods to ensure everyone will have access to food at any time; and

(d) Giving the Malaysian Armed Forces (MAF) enhanced enforcement powers to arrest illegal immigrants along Malaysian borders.



No Election

iii. When will the State of Emergency cease?

The King has proclaimed that the State of Emergency will subsist until 1 August 2021. In the meantime, the Government will establish an Independent Special Committee under an Ordinance to advise the King on the situation from time to time in order to determine whether the State of Emergency can be terminated earlier than the stipulated date.

The Ordinances made during this period will consequentially cease to be in force after six months from the cessation of the State of Emergency as provided for in Article 150(7) of the Constitution.

B. WHAT'S NEXT?

Based on the announcement by the Prime Minister, the administrative and public service machineries at the federal and state level will not be affected during the Emergency. Business will continue as usual subject to the new norms and standard operating procedures. The Emergency should also not be seen as a military coup nor will there be a curfew.

What is also clear is that no elections will be held during the Emergency, be it general, state or by-elections. Given the sudden spike in Covid-19 cases arising from the Sabah State elections in September 2020 and the current flood calamity in Malaysia, it does not come as a surprise that this decision was made. The focus during this period will be quelling the more pressing societal matters at hand.

Unlike the state of affairs in 1969 where an Emergency was proclaimed due to the racial riots and strict curfews were put into place, this time around, Malaysians are united in fighting a single enemy, albeit an invisible one. Many lives have been lost and livelihoods challenged to the brink of despair. We can only hope that everyone does their part to fight this pandemic and to alleviate the suffering brought about by it. The Emergency comes at a time when the Government and the Rakyat must come together hand in hand with a singular objective, to win the battle against Covid-19.



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