

COVID 19 UPDATES

The latest Kuala Lumpur Bar Committee advice for members of the Kuala Lumpur Bar (current as at 02.04.2020)

Kuala Lumpur Bar
Committee
2020/2021

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FOREWORD

As at **12.00 pm 30.03.2020**, Malaysia has had 37 deaths and 2,626 infections from the ongoing Coronavirus disease 2019 (COVID-19) pandemic. Those numbers are even more startling if one keeps in mind that the first identifiable patient in Malaysia was infected with Covid-19 only on **25.01.2020**.

The Kuala Lumpur Bar Committee (KLBC) prioritises the health, safety and interests of its members. Thankfully those sentiments are similarly cherished by other stakeholders of the justice system and numerous announcements have been made to ensure that the health and safety of all those involved in the justice system are safeguarded.

Nevertheless, those very same “*numerous announcements*” are what necessitated this Update as it became apparent that:

- a. a central repository for the announcements was needed; and
- b. a framework needed to be in place to track all the issues covered by the announcements.

This Update aims to meet those twin objectives and hopefully goes some way towards meeting them.

We intend to consistently update this repository from time to time but members are encouraged to check the Circulars issued by the Chief Registrar, Bar Council or KLBC directly as things can be fluid where Covid-19 is concerned.

Even so, please rest assured that we are here for you during this challenging time. Be mindful of your wellbeing and do not be afraid to reach out to the KLBC or the KL Bar Secretariat if you have any concerns or queries.

God bless and stay safe.



Nizam Bashir bin Abdul Kariem Bashir
02 April 2020

CHAPTER 1 : BACKGROUND AND THE MCO

- 1.1. The Coronavirus disease 2019 (COVID-19), *an infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)*, has spread globally and resulted in the ongoing 2019–20 coronavirus pandemic.¹ (hereinafter “**Covid-19**”)
- 1.2. The first case in Malaysia was identified on **25.01.2020** and with the uptick in numbers, the Malaysian Government took necessary steps to regulate the spread of the disease by introducing:
- a. *Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 [P.U.(A) 87] dated 17.03.2020;*
 - b. *Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Order 2020 [P.U.(A) 91] dated 18.03.2020;* and
 - c. *Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Extension of Operation Order 2020 [P.U.(A) 98] dated 25.03.2020.*

(hereinafter collectively referred to as the “**the MCO**”)

- 1.3. Pursuant to the MCO:
- a. **all** States in Malaysia were declared to be “*infected local areas*”;² and

¹ Covid-19 was declared a pandemic by World Health Organisation Director General, Dr Tedros Adhanom Ghebreyesus, on 11.03.2020

² See regulation 2 of the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 [P.U.(A) 87] dated 17.03.2020.

b. **all** premises, save for those providing “essential services”, were to be closed.³

1.4. The above statutory closure for non-essential service premises:

a. came into force on **18.03.2020** and affected government as well private premises; and

b. was initially scheduled to last until **31.03.2020**⁴ but was subsequently extended until **14.04.2020**.

1.5. Legal practitioners in West Malaysia appear to be:

a. characterised as providing non-essential service; and

b. similarly affected by the MCO.

CHAPTER 2 : GUIDANCE FOR LAWYERS AND PUPILS

2.1. General Plan of Action During the MCO

Members are advised to read the following guide on emergency closures entitled “Law Practice Preparedness Plan” as prepared by Praktis.

³ See regulation 2 read together with regulation 5(1) of Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Order 2020 [P.U.(A) 91] dated 18.03.2020.

⁴ See regulation 1(2) Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Order 2020 [P.U.(A) 91] dated 18.03.2020 read together with regulation 2 Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Extension of Operation Order 2020 [P.U.(A) 98] dated 25.03.2020.

2.2 Working Remotely During the MCO

Part of business continuity protocols during the MCO may result in legal practitioners working remotely. The following circulars would be relevant in this regard i.e. BC Circular No. 061/2020, BC Circular No. 063/2020 and BC Circular No. 082/2020.

It also goes without saying that the usual ethical considerations, *such as competence and supervision, preservation of client confidential information, conflicts of interest, client disclosure/client consent on disclosure of information*, remain applicable even though practitioners may opt to work remotely during the MCO.

The following practical workarounds may be relevant for those working remotely:

- a. if printing '*hardcopies*' is not an option and PDF copies are preferred, members may wish to consider:
 - i. **saving as PDF** (*using Microsoft Word's File: Save As to save the Word document and it must be noted that this option is preferable for documents with hyperlinks*); or
 - ii. **printing to PDF** (*print the Word document via a virtual PDF printer such as Microsoft Print to PDF or CutePDF*).
- b. If physically signing '*hardcopies*' is not possible, members may wish to look at digitally signing or e-signing their documents. There is a distinction between the two but for the sake of brevity, this Update will not deal with

the differences between the *Digital Signature Act, 1997* and the *Electronic Commerce Act, 2006*. Suffice to say, e-signatures would be cheaper to implement as compared to digital signatures, but the validity of digital signatures would be less likely to be challenged. If members wish to e-sign a PDF letter, kindly look at this [guide](#).

- c. If scanning is required and a reliable scanning machine is not on hand, members may wish to look at taking a snapshot of the document in question with their smartphones and using an app like [CamScanner](#) to convert the photographs to a format like PDF.
- d. If video conferencing is required, members may wish to look at:
 - i. [Microsoft Teams](#) (presently maxed to 250 participants for team meetings but with only 4 active video feeds showing);
 - ii. [Zoom](#) (presently maxed to 100 participants for its free version, 40 minute limit on meetings and with 49 active video feeds showing);
 - iii. [Group Facetime](#) (presently maxed to 32 participants); or
 - iv. [WhatsApp Video Call](#) (presently maxed to 16 participants).

2.3 Managing Employees During the MCO

Members are advised that the Bar Council has issued a position paper on the matter, i.e. [BC Circular No. 078/2020](#), and ought to read the same.

In summary, employers generally are **not** able to:

- a. compel employees to take annual or unpaid leave; and
- b. the employees are entitled to their full salary throughout the MCO.

2.4. Guidance on Judicial Institutions

2.4.1 General Closure (And Exceptions)

Pursuant to an email dated **17.03.2020**, the Chief Registrar of the Federal Court of Malaysia informed the Bar Council that the premises of **all** Courts are generally closed save for:

- urgent civil matters;
- online case management or e-review (*which can take place merely by logging in and without the need for tokens or certificates*); and
- fresh charge and bail.

NOTE : Pursuant to BC Circular No. 085/2020 issued on 01.04.2020, **remand proceedings** are now dealt with in **police stations** during the duration of the MCO. (*The **status quo remains unchanged for Kuala Lumpur** i.e. remand proceedings will be maintained at the remand centres in Ibu Pejabat Polis Daerah **Dang Wangi & Lokap Berpusat Jinjang.***)

Further details can be found in the email issued by the Chief Registrar as contained on pages 3 to 7 of the annexures to BC Circular No. 063/2020.

Members are also advised to take note of the fact that during the MCO, notice applications filed under certificate of urgency can be conducted and heard online **subject to** the mutual consent of parties and the same being permitted by the Court. Details on this can be found in BC Circular No. 077/2020.

Either way, members are advised to:

- a. liaise with the relevant judicial officers in whichever State (*as per BC Circular No. 067/2020*) if they have any queries on the same; and/or
- b. visit <https://efs.kehakiman.gov.my/EFSWeb/Default.aspx> from time to time to check new dates for their existing civil or criminal matters in Court during this MCO period.

2.4.2 Court Attire

The previous rules and regulations in relation to open Court attire continue to apply⁵ **save that** with Covid-19, the Courts appear to have allowed *“all those present during open court proceedings to wear face masks and gloves, as a measure to prevent the spread of COVID-19”*.⁶

⁵ <http://www.kehakiman.gov.my/en/node/1939>

⁶ <https://www.theedgemarkets.com/article/covid19-courts-allow-lawyers-public-wear-face-masks-during-proceedings>

2.4.3 Yayasan Bantuan Guaman Kebangsaan (YBGK)

Members of the Bar who continue to perform YBGK duties during the MCO will be issued with an authorisation letter from State Legal Aid Centres to facilitate their travelling during the MCO. Further details can be found [here](#).

2.4.4 Pupillage

While the Petition for Admission cause papers and all other relevant documents can still be e-filed, physical service of those documents on the Attorney General's Chambers, Secretary of the Bar Council and State Bar Committees will **not** be possible during the MCO except in respect of the KLBC where the service of those documents is by e-mail and thus those documents can still be e-mailed to petition@klbar.org.my.

That aside, for those presently undergoing pupillage, kindly take note that pursuant to [BC Circular No. 068/2020](#), pupils are exempted from legal aid duty during the MCO. Pupils with further questions can direct their queries to Mr. Jeevanathan Angappan, *the Legal Aid Officer of Kuala Lumpur Legal Aid Centre*, at jeeva@kllac.com.

2.4.5 Industrial Courts and Inquiries Before Director General of Labour (“Labour Court”)

On **25.03.2020**, the President of the Industrial Court announced that “*all case managements and hearings that have been fixed in (the)*

Industrial Court of Malaysia (ICM) during this period will be postponed. Parties will be notified of new dates after the end of the MCO period."

To date, no announcement by the Director General of Labour in relation to the MCO has come to our attention.

2.5 Guidance on Arbitral Institutions

2.5.1 Pursuant to an announcement dated **17.03.2020** and **26.03.2020**, the Asian International Arbitration Centre (AIAC) announced that its premises and office would be closed in accordance with the MCO and given those constraints, it would **not** be able to register "new *Adjudication, Mediation and MyNIC matters*". All existing and ongoing ADR matters remain unaffected. Further details can be ascertained from the links.

2.5.2 Other leading arbitration centres in Asia, such as the:

- a. Singapore International Arbitration Centre; and
- b. the Hong Kong International Centre

are offering virtual meetings options to aid parties affected by COVID-19.

2.6 Guidance on the Malaysia Competition Commission (MCC)

Pursuant to an announcement dated **17.03.2020**, the MCC announced that its premises and office would be closed in accordance with the MCO.

2.7 Guidance on Conveyancing Practice During the MCO

The Bar Council, vide BC Circular No. 084/2020, has issued an extensive circular dealing with probable issues faced by conveyancing practitioners. A common query has been whether practitioners can witness signatures via video conferencing during the MCO and the Bar Council's Conveyancing Practice Committee (CPC) has taken the position that practitioners should **not** witness signatures via video conferencing. Nevertheless, the CPC accepts that the law on the matter is uncertain and those wishing to witness signatures in this fashion are advised to seek independent legal advice.

That aside, members are also advised that pursuant to:

- a. a letter dated **17.03.2020**, the **Pejabat Pengarah Tanah dan Galian Wilayah Persekutuan** announced that it would be closing its premises in accordance with the MCO.⁷
- b. an announcement dated **27.03.2020**, **Lembaga Hasil Dalam Negeri** announced that its premises are closed in accordance with the MCO.⁸

⁷ https://www.malaysianbar.org.my/cms/upload_files/document/Circular%20No%20063-2020.pdf at pages 8-9.

⁸ http://www.hasil.gov.my/bt_goindex.php?bt_kump=6&bt_skum=1&bt_posi=2&bt_unit=1&bt_sequ=523

- c. an announcement dated **01.04.2020**, the **Pejabat Pengarah Tanah dan Galian Wilayah Persekutuan** announced that specific measures would be in place for the MCO.⁹

CHAPTER 3 : GUIDANCE FOR JOURNALISTS - MEDIA ACCESS TO COURTS DURING THE COVID-19 PANDEMIC AND THE MCO

The previous practice of the Courts granting liberal access to Court rooms to journalists appear to be no longer in place.

According to media reports:

- a. where the Kuala Lumpur Court Complex are concerned, journalists are only permitted to gather at the entrance gates of the complex to wait for information from passing lawyers or prosecutors; or
- b. in the Courts in other States, a limited number of journalists have been allowed to follow proceedings of new court cases related to contraventions of the MCO.¹⁰

⁹ <http://www.ptgwp.gov.my/portal/makluman-bekaitan-peserahan-urusniaga-selaras-penutupan-pejabat-berikutan-perintah-kawalan-pergerakan-18-hingga-31-mac-2020>

¹⁰ <https://www.theedgemarkets.com/article/covid19-courts-allow-lawyers-public-wear-face-masks-during-proceedings>

CHAPTER 4 : GUIDANCE FOR THE GENERAL PUBLIC

4.1 Judicial Institutions

See paragraph **2.4.2** above for guidance on attire. The general public are also advised that all persons entering the Kuala Lumpur Court complex will be subject to a temperature check. Entry will only be granted to individuals with a temperature below 37.8 °C.

4.2 Arbitral Institutions

To the best of our knowledge, no guidance has been issued by the Asian International Arbitration Centre (AIAC). Nevertheless, keep in mind that the following general precautions have been adopted at the Hong Kong International Arbitration Centre concerning its staff and facilities:

- All HKIAC front-line service staff will wear face-masks at all times;
- All HKIAC's staff will maintain a high standard of personal hygiene;
- Implementation of increased cleaning/sterilisation of impacted parts of HKIAC's facilities; and
- All persons entering HKIAC's headquarters in Hong Kong will be subject to a temperature check. Entry will only be granted to individuals with a temperature below 37.8 °C.

CHAPTER 5 : COVID-19 MENTAL HEALTH RESOURCES FOR THE LEGAL PROFESSION

Members are advised to look at the following resources on this issue.

- a. Ministry of Health Malaysia – Mental Health and Pyschosocial Support in Covid-19; or
- b. American Bar Association – Extensive resources on coping with Anxiety, Depression Etc.

CONCLUSION

If members have further queries, members are advised to contact the KL Bar Secretariat via the following email address i.e.:

klbc@klbar.org.my

Kindly note that the KL Bar Secretariat is closed during the period of the MCO.

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