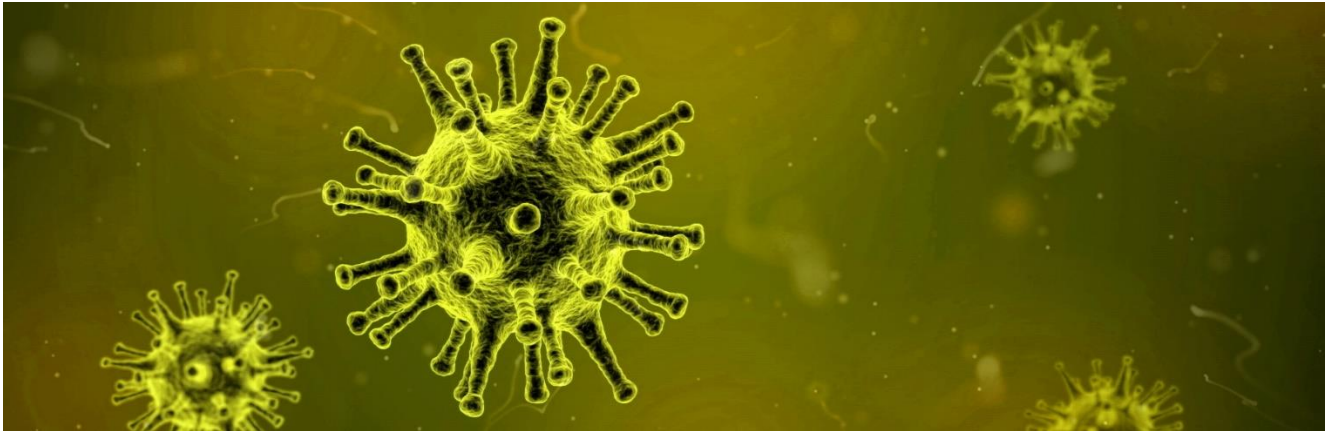


MCO AND THE ECONOMIC STIMULUS PACKAGE 2020



The Prime Minister of Malaysia had on 16 March 2020 announced the imposition of a Movement Control Order (“**Order**”) in an attempt to control the outbreak of Covid-19. The Order, effective across the nation, was initially implemented for the period from 18 March 2020 until 31 March 2020 (“**Movement Control Period**”). For further information on the Order and Frequently Asked Questions by Employers on the Order and the Movement Control Period, please refer to <https://www.shinassociates.com.my/movement-control-order-2020-employer-faqs/>.

MEASURES INTRODUCED BY BANK NEGARA MALAYSIA ON 24 MARCH 2020

On 24 March 2020, Bank Negara Malaysia (“**BNM**”) announced several measures to assist borrowers or customers affected by the consequences following the imposition of the Order.

These measures include:

- (a) The granting of an automatic moratorium by banking institutions on all loan/financing repayments/payments, principal and interest (excluding credit card balances) for small and medium-sized enterprises and individuals. This moratorium will take effect for a period of 6 months starting from 1 April 2020, provided that the loans and financing are: (i) not in arrears exceeding 90 days as at 1 April 2020; and (ii) denominated in Malaysian Ringgit.

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If a borrower or customer wishes to continue with the current repayment/payment arrangements established prior to the automatic moratorium, this must be allowed to continue with minimal inconvenience imposed upon the borrower or customer.

- (b) Facilitation by banking institutions of moratorium requests by corporate borrowers on loan/financing repayments that will enable viable corporations to keep employees and quickly resume economic activities when the current conditions stabilise and improve.
- (c) Requirements on financing or lending activities carried out by banking institutions in the broad property sector, purchase of shares and units of unit trust funds being immediately lifted, and the lending or financing limits for exposures to counterparties connected to Tenaga Nasional Berhad, Petroleum Nasional Berhad and Telekom Malaysia Berhad according to the economic dependence factors set out in the Single Counterparty Exposure Limit Policy Document, is increased temporarily from 25% to 35% of the banking institution's total capital, subject to a few requirements imposed by BNM.
- (d) Allowing banking institutions to drawdown the capital conservation buffer of 2.5%, operate below the minimum liquidity coverage ratio of 100%, and to reduce the regulatory reserves held against expected losses to 0%. Further, the Net Stable Funding Ratio ("NSFR") will still be implemented on 1 July 2020 with a lower NSFR requirement of 80% applicable. Banking institutions shall remain a minimum NSFR of 100% from 30 September 2021 onwards.
- (e) BNM has also announced further measures namely:
 - (i) any new statistical reporting requests, other than those required to address the impact of the Covid-19 outbreak will be suspended;
 - (ii) flexibility in timelines for banking institutions to address supervisory concerns raised by BNM;
 - (iii) deadlines for responding to issued discussion papers and exposure drafts to be extended to 30 June 2020 and beyond;
 - (iv) timelines for regulatory, supervisory submissions and most statistical submissions to be extended; and
 - (v) enforcement actions for non-compliance with statistical reporting deadlines to be suspended.

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THE PRIME MINISTER'S SPEECH ON 25 MARCH 2020

On 25 March 2020, the Prime Minister announced an extension of the Movement Control Period by a further 14-day period until 14 April 2020 ("**Extended Movement Control Period**"). The extension will be periodically reviewed and the Prime Minister has indicated that any further extensions to the Extended Movement Control Period will be announced accordingly. The Prime Minister in his address announced various other initiatives to be undertaken by the Government to assist the nation during the Movement Control Period and Extended Movement Control Period.

THE PRIME MINISTER'S SPEECH ON 27 MARCH 2020

On 27 March 2020, the Prime Minister announced the PRIHATIN Rakyat Economic Stimulus Package as part of the Economic Stimulus Package to address possible concerns and consequences following the Extended Movement Control Period.

Some of the initiatives announced during this address include:

(a) Wage Subsidy Programme ("WSP")

The Government will provide a wage subsidy of RM600 per month to employers for every eligible employee for a period of 3 months, up to a maximum of 100 employees. To qualify for the WSP, the following criteria must be fulfilled:

- (i) the applicant employers and relevant employees must be registered with the Employees' Social Security Organisation ("**SOCSO**") and currently contributing to the Employment Insurance System ("**EIS**");
- (ii) the applicant employers must have experienced more than a 50% decline in revenue since 1 January 2020; and
- (iii) the applicant employers may only apply for the WSP in respect of employees earning a monthly salary of RM4,000 and below.

Employers which have applied for the WSP must ensure that during the 3 months of the WSP payment, and for a further 3 months following the last payment received under the WSP, they do not: (i) carry out retrenchment exercises; (ii) force employees to take unpaid leave; or (iii) force employees to take a pay-cut.

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The WSP is different from the RM600 Employee Retention Programme (“ERP”) implemented earlier in March 2020 as the ERP is applicable to employees who have been instructed by their employers to take unpaid leave for a minimum period of 1 month. For more information on the ERP and frequently asked questions regarding the ERP, please refer to <https://www.shinassociates.com.my/mco-employer-fags-economic-stimulus-package-2020/>.

According to the Frequently Asked Questions on the Wage Subsidy Programme issued by SOCSO (“FAQs”), applications for the WSP may be submitted by applicant employers from 1 April 2020 through the webpage prihatin.perkeso.gov.my. Supporting documents which are required for the WSP application include:

- (i) a list of names of eligible employees (limited to 100 employees);
- (ii) the bank account details of the employer;
- (iii) a copy of the employer’s bank panel registration or MyCOID;
- (iv) a copy of SSM/ROS/ROB;
- (v) PSU50 Declaration (*which can be downloaded from SOCSO’s website*); and
- (vi) supporting evidence such as financial statements or sales reports which have been verified by the management and other relevant declaration documents.

(b) Small and Medium-sized Enterprises (“SMEs”)

The initiatives announced in the Prime Minister’s speech for SMEs are:

(i) Special Relief Facility (“SRF”)

BNM has increased the initial SRF by RM3 billion, amounting to a total of RM5 billion to assist SMEs to alleviate short-term cash flow problems faced as a result of the Covid-19 outbreak. The SRF will be available from 6 March 2020 until 31 December 2020, or until the exhaustion of this allocation, whichever is earlier. The maximum financing rate for the SRF is 3.50% per annum, inclusive of guarantee fees and the tenure is up to 5.5 years (including the 6-month moratorium period). No collateral is required for the SRF. For further details on eligibility and the application procedure, please refer to any of the participating financial institutions on BNM’s website.

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(ii) **All Economic Sector (“AES”) Facility Fund**

The AES facility has increased from RM5.8 billion to RM6.8 billion to further enhance financing for SMEs. The maximum financing rate for the AES is 7.0% per annum. The facility is available to SMEs in all economic sectors, namely agriculture, manufacturing (including agro-based), and services, with a maximum financing tenure of 5 years. For further details on eligibility and the application procedure, please refer to any of the participating financial institutions on the BNM website.

(iii) **Micro Credit Scheme (“MCS”)**

A further RM500 million totalling to RM700 million will be allocated to the MCS to increase access to collateral-free financing for micro enterprises. This scheme administered by Bank Simpanan Nasional (“BSN”) will be offered at an interest rate of 2.0% per annum with no collateral required. Loan eligibility requirements have been relaxed to a minimum of 6 months of operation and maximum financing amount has increased to RM75,000 for each entrepreneur.

(iv) **BizMula-i and BizWanita-i schemes**

SMEs may also apply for the BizMula-i and BizWanita-i schemes for financing under Credit Guarantee Malaysia Berhad (“CGC”). Both schemes are direct financing schemes designed to facilitate financial access to eligible and viable SMEs, with financing amounts from RM30,000 to RM300,000. The application form is available at any CGC branch and on CGC’s website. Completed forms should be submitted to any CGC branch.

(v) **Increased Guarantee Coverage for SMEs**

In the event that SMEs have difficulty in obtaining credit, the Syarikat Jaminan Pembiayaan Perniagaan will offer government guarantee schemes of up to RM5 billion, with the coverage for the guarantee having increased from 70% to 80%.

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(c) **Exemption of Human Resources Development Fund (“HRDF”) Levy Payment**

According to the Circular on the “Exemption of Human Resources Development Levy Payment for Industries Affected by Coronavirus (Covid-19) Pandemic” issued by Pembangunan Sumber Manusia Berhad on 27 March 2020, employers from the following sectors qualify for the exemption:

- (i) Manufacturing Sector;
- (ii) Services Sector; and
- (iii) Mining and Quarrying Sector.

Employers listed under the 63 sub-sectors within the manufacturing, services or mining and quarrying sectors, pursuant to the *Pembangunan Sumber Manusia Berhad Act 2001* are exempted from paying the HRDF levy for a 6-month period commencing from 15 April 2020 to 15 September 2020 (“**Exemption Period**”). No applications are required for this exemption and all registered employers will automatically be exempted.

The Exemption Period will apply in respect of the monthly levy payments for March 2020 to August 2020. Employers are required to resume payments for September 2020 on or before 15 October 2020. It should be noted that employers with outstanding arrears in their levy or interest are not exempted from paying their arrears. It is imperative that such employers continue paying the outstanding arrears without delay to avoid further interest being imposed.

As employers are still encouraged to send their employees for training, HRDF-registered employers may still continue submitting their training claims during the Exemption Period. However, where there is insufficient levy balance, the payment for the claim will be made in stages. The first payment will be based on the available levy balance while the remaining payment will be made after the Exemption Period, once the employer has sufficient levy balance. Employers must ensure that submissions for training claims are made within 6 months from the training end-date.

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(d) Other initiatives for employers

- (i) Introduction of the Employer Advisory Services programme on 15 April 2020 by the Employees Provident Fund which includes options for deferral of payments, restructuring and rescheduling of employer contributions.
- (ii) Postponement of income tax instalment payments for all SMEs for a 3-month period from 1 April 2020 onwards. For businesses in the tourism sector, tax instalment payments have also been postponed for a 6-month period from 1 April 2020. For other sectors, the amount of income tax imposed in the third, sixth and ninth instalments during the basic accounting period can be revised.
- (iii) RM50 billion guarantee scheme with a guarantee of up to 80% of the loan amount. This scheme will be subject to credit evaluation by Danajamin Nasional Berhad and is available for businesses in all sectors. The minimum guaranteed loan size is RM20 million per business and applications for the scheme will commence from 1 May 2020 to 31 December 2020 or until the fund is fully utilised.

FREQUENTLY ASKED QUESTIONS

1. Will I have to repay my loans after the end of the 6-month period?

Yes. While loan repayments may be subject to new arrangements established by the respective banking institutions, borrowers will still have to repay their loans after the end of the 6-month period.

Borrowers who wish to continue with their existing repayment/payment arrangements with their banking institutions can continue to do so and should inform their banking institutions of such intention as the moratorium will be granted automatically from 1 April 2020 onwards.

As a general rule, banking institutions are expected to consider and offer suitable repayment options to borrowers based on their ability to repay.

Further information on the treatment of suspended loan or financing repayments throughout the moratorium period, as well as the options available to borrowers or customers upon resuming repayments after the end of the moratorium period will be provided by the respective banking institutions.

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2. **How do I know if my business is considered an SME and eligible for the initiatives announced by the Prime Minister for SMEs?**

According to the “Guideline for New SME Definition” issued by SME Corporation Malaysia in August 2016, a business can qualify as an SME if it meets either one of the two specified criteria, namely sales turnover or full-time employees, whichever is lower.

Category	Microenterprise	Small	Medium
Manufacturing	Sales turnover of less than RM300,000 OR less than 5 full-time employees.	Sales turnover from RM300,000 to less than RM15 million OR full-time employees from 5 to less than 75.	Sales turnover from RM15 million to not exceeding RM50 million OR full-time employees from 75 to not exceeding 200.
Services & Other Sectors		Sales turnover from RM300,000 to less than RM3 million OR full-time employees from 5 to less than 30.	Sales turnover from RM3 million to not exceeding RM20 million OR full-time employees from 30 to not exceeding 75.

Further, if a business fulfils either one criteria across the different sizes of operation, then the smaller size will be applicable. For example if a business’ sales turnover falls under “microenterprise” but the number of employees fall under “small”, the business will be deemed to be a microenterprise.

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3. **In order for an employer to apply for the WSP, must both of the following criteria be collectively fulfilled?: (i) applying only on behalf of employees earning a monthly salary of RM4,000 and below; and (ii) having a decline in revenue of more than 50% from 1 January 2020?**

Yes, both criteria must be fulfilled to qualify for the WSP. The WSP is only applicable to employees who earn RM4,000 and below AND where the applicant employer demonstrates a decline of more than 50% in revenue from 1 January 2020.

4. **If all my employees earn above RM4,000 per month:**

- (a) **Can I still apply for the WSP?**

No, the WSP is only applicable to employees who earn RM4,000 and below.

- (b) **If my employees agree to take a pay-cut so they fall under RM4,000 a month, can I apply for the WSP?**

No, regardless of the fact that there is an agreement between the employer and the employees for the employees to take pay-cuts so that the employees' pay falls below RM4,000, the employer will still be ineligible for the WSP as it is only applicable to employees who earn RM4,000 and below without any salary reduction exercise being carried out.

5. **The Prime Minister said in his announcement that employers are not allowed to reduce employees' salaries. Does this apply to employees whose wages are being subsidized under the WSP? What about employees who have agreed to take a pay-cut?**

Yes, employers are not allowed to implement pay-cuts on employees whose wages are being subsidized under the WSP. As for the employees who have agreed to take pay-cuts prior to the implementation of the WSP, it is unclear whether such employees would qualify for the WSP as this is subject to further clarification and confirmation from SOCSO.

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6. **If a company applies for the WSP, can the company still conduct a salary reduction exercise or retrenchment exercise for other employees which earn above RM4,000?**

While the Prime Minister has stated that employers are not allowed to reduce employees' salaries following the implementation of the WSP, pay-cuts may still be implemented for those earning above RM4,000 provided that such employees **voluntarily consent** and mutually agree in writing to do so. Employers cannot forcefully implement pay-cuts on their employees, and any unilateral requirement by the employer to take a pay-cut will risk potential claims being brought against them.

Retrenchment exercises are still not encouraged and should be treated as a last resort. Nevertheless, according to the Frequently Asked Questions issued by the Ministry of Human Resources on 31 March 2020 ("**MOHR FAQs**"), in circumstances where an employer cannot avoid carrying out a retrenchment exercise for these employees, the employer must comply with the following:

- (i) The reasons for the retrenchment exercise as a result of the employer's business having been affected by Covid-19 must be genuine;
- (ii) The employer must take mitigating steps to avoid the retrenchment exercise such as reducing work hours, limiting or freezing recruitment, limiting over-time, reducing weekly work days or working on public holidays, reducing employees' salaries or implementing temporary lay-offs; and
- (iii) If retrenchment still cannot be avoided, foreign employees should be terminated first. For local employees, the LIFO (*last in and first out*) principle must be adhered to. However, this principle need not be followed if the employer has a strong justification for doing so. The employer must then report the retrenchment exercise to the nearest Labour Office, at least 30 days before the date the retrenchment exercise is implemented.

7. **If I have only started to face a decline in revenue in March 2020, can I still apply for the WSP?**

Yes, if an employer starts to face a decline in revenue in March 2020, an application for the WSP may be made by attaching the relevant supporting financial documentation for January 2020 and February 2020 to prove a decline of more than 50% in revenue.

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8. **How do I show proof of more than 50% decline in revenue from 1 January 2020 if my audited accounts are not ready yet?**

According to the FAQs, employers can show proof by filling up the declaration document affirming that the company is experiencing more than 50% decline in revenue by comparing sales volume in January 2020 with the subsequent months and attaching supporting evidence such as financial statements or sales reports approved by the management. The declaration document labelled "Akuan Pengisytiharan PSU50" can be obtained from SOCSO's website.

9. **If I have not suffered a 50% decline in revenue from 1 January 2020, can I carry out a salary reduction exercise or retrenchment exercise on my employees, which earn below RM4,000 and above RM4,000?**

While the Government has announced that employers are not allowed to implement pay-cuts, instruct employees to take unpaid leave, or carry out retrenchment exercises, it should be noted that compliance with established laws and procedures would still apply if such exercises are ultimately necessary. As per question 6 above, the employer may carry out a salary reduction exercise provided that it is mutually agreed in writing by the employee.

As for retrenchment, the employer must ensure that the steps provided for in question 6 above, amongst other recommended procedures under employment laws are complied with before implementing such measures.

10. **The terms of the WSP state that I cannot retrench employees, implement salary reduction, or instruct them to take unpaid leave for a period of 3 months after the WSP is implemented and for a further 3 months after that. Does this period commence from 1 April 2020 or from the date I receive the payment from SOCSO?**

Pursuant to the FAQs, this period commences from the date of receipt of the WSP payment from SOCSO. This means that the employer cannot implement retrenchment exercises, salary reduction or instruct employees to take unpaid leave for a total period of 6 months from the said date.

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11. Do I have to ensure that the payment I receive under the WSP is transferred to the employees?

No, the WSP is implemented to assist employers to pay the wages of their employees to sustain their businesses. This means that the payment received under the WSP from SOCSO does not need to be transferred to the employees directly but the employers must ensure that the employees' respective contracted salaries are still paid. The employer must also ensure that the monthly contributions for SOCSO and EIS based on the actual contracted salary of the employees are still made.

12. What is the difference between the WSP and the Employee Retention Program ("ERP") that was previously announced by the Government?

The differences between the ERP and the WSP are as follows:

Programme	ERP	WSP
Details	Financial assistance of RM600 per month for employees who have been instructed to take unpaid leave following the Covid-19 outbreak.	Financial assistance of RM600 per month for employees earning RM4,000 and below and where the employer suffers a decline of more than 50% in revenue.
Eligibility criteria	(i) The employees must be registered and currently contributing to the EIS; (ii) Employees earning a monthly salary of RM4,000 and below; (iii) Employees who have been instructed to take unpaid leave: <ul style="list-style-type: none"> • From 1 March 2020; • For a minimum period of 30 days; • Up to a maximum of 6 months. 	(i) The employer must demonstrate a decline in revenue of more than 50% by comparing the sales volume in January 2020 with the subsequent months. (ii) Limited to only 100 employees that are earning RM4,000 and below and are registered with the EIS. (iii) Employers must ensure that no retrenchment measures, salary reduction measures or forced unpaid leave is undertaken for a total of 6 months from the receipt of payment from SOCSO.
Payment Method	The ERP payment will be made to the employer and the employer must within 7 days from the receipt of payment from SOCSO, credit the amount to the respective employees.	The WSP payment will be made to the employer within 14 days from the date of application.
Payment Period	From 1 month to 6 months	3 months

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13. If I have applied for the ERP for employees who are instructed to take unpaid leave, are my employees still entitled to the WSP in addition to the ERP?

No, employers are not allowed to apply for the ERP and WSP during the same months and for the same employees. However, employers are still allowed to apply for the ERP and WSP for other employees that are not covered under either programme by satisfying the eligibility requirements for the respective programme.

14. Are all employers under the manufacturing, services and mining and quarrying sectors eligible for the HRDF levy exemption?

Yes, according to the "Frequently Asked Questions on the HRDF" dated 1 April 2020, all HRDF registered employers falling within the 63 sub-sectors will be exempted from paying the mandatory HRDF levy for March 2020 to August 2020 during the Exemption Period.

15. What if I have already made payment towards the HRDF levy for the month of March 2020? Can I get a refund?

Yes, any payment made towards the HRDF levy during the Exemption Period will automatically be refunded to the employer. No applications for the refund are required.

POINTS TO NOTE

Where applications for the WSP have been made, it would be advisable to comply with the conditions thereof relating to restrictions on imposing unpaid leave, salary reduction, and retrenchment to avoid potential issues arising from breaches of Government directives on the matter. Should these exercises be necessary in the absence of applications for the WSP, employers would need to ensure sufficient justification is documented and maintained for such decisions and are advised to seek legal advice on the same.

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