

COVID-19: courts go online to regulate administration of justice

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Introduction

In order to curb the spread of COVID-19, on 16 March 2020 the government announced the Movement Control Order (MCO), which took effect on 18 March 2020. During the MCO period, all government and private business premises are closed, save for those providing essential services. Under the series of regulations gazetted pursuant to the Prevention and Control of Infectious Disease Act 1988, (1) judicial and legal services are excluded from the list of essential services. Therefore, the courts and offices of advocates and solicitors are closed while the MCO is in effect.

Following an announcement by the prime minister on 1 May 2020, the MCO – which is initially scheduled to end on 12 May 2020 – will be eased. It is being replaced with a Conditional MCO (CMCO) pursuant to the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No 5) Regulations 2020, from 4 May 2020 until 12 May 2020. The CMCO has currently been further extended to 9 June 2020 pursuant to the prime minister's announcement on 10 May 2020. A regulation for such extension has yet to be gazetted. Most economic and social activities will be allowed, except for mass gatherings or activities that would expose the public to infection. On 3 May 2020 the judiciary announced that all courts will resume operations on 13 May 2020, subject to strict safety measures, and that the following have been circulated which relate to the courts' operations:

- case conduct guidelines during the CMCO and after the MCO; and
- prevention of COVID-19 standard operating procedures during the CMCO and after the MCO.

Given that the courts are resuming operations, law firms are also opening, with some employing duty rosters to allow employees to work rotationally.

Judiciary response to MCO

Throughout the MCO from 18 March 2020 until 3 May 2020, the judiciary had taken adequate measures to ensure that the public was not denied access to justice.

On 17 March 2020, the day before the MCO came into effect, the judiciary issued a directive stating that:

- all trials or hearings of civil and criminal matters scheduled to take place during the MCO are postponed until a yet-to-be-determined date;
- any urgent applications will be dealt with by an appointed court officer or judge at different court levels;
- documents can be filed through a court's electronic filing (e-filing) system. Courts with no e-filing system can accept the filing of documents only once the MCO has been lifted; and
- case management for civil matters by way of online e-review will continue, but matters scheduled for manual case management are postponed until a yet-to-be-determined date.

On 26 March 2020 the judiciary issued a notification stating that parties can apply to the courts for an online hearing of civil matters via an e-review system, an exchange of emails or a video conference, subject to:

- the agreement of all parties;
- the court's discretion;

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- the online hearing being limited to *ex parte* or *inter partes* applications filed with a certificate of urgency; and
- the application for the online hearing being made to the courts via email at least three days before the hearing date or as otherwise directed by the courts.

On 10 April 2020 the judiciary confirmed that the directions on hearings to be conducted online during the MCO will continue to apply.

The measures taken to regulate the administration of justice while the MCO was in effect are feasible, logical and in line with the approaches adopted by other countries. The measures' effectiveness is evident from [the statistics](#) released by the judiciary on 15 April 2020:

- Federal Court – 376 cases have been conducted via e-review and 25 cases have been conducted via email.
- Court of Appeal – 1,813 cases have been conducted via e-review.
- High courts – 4,093 civil cases have been conducted via e-review, 2,549 civil cases and their hearings (uncontested matters) have been conducted via email and 18 civil hearings have been conducted via video conference. As regards cases with a certificate of urgency, 75 have been conducted via e-review and 12 have been conducted via video conferencing. Further, 370 criminal cases have been conducted via e-review.
- Subordinate courts – 2,509 hearings have been conducted via e-review, 27 hearings have been conducted via email and seven hearings have been conducted via video conference.
- 111,183 documents have been filed and processed via e-filing.

The judiciary also took a progressive move by live streaming the online Court of Appeal hearings on 23 April 2020 at 10:00am. This enabled the public to observe the hearing, replicating the public gallery in an open court.

Judiciary response to CMCO

On 10 April 2020 and 2 May 2020, respectively, the judiciary confirmed that the directions on hearings to be conducted online during the MCO will continue to apply during the CMCO until 12 May 2020 and provided a non-exhaustive list of unchallenged applications in the High Court which can be heard online starting from 4 May 2020, such as applications for:

- amendments;
- time extensions;
- *ex parte* and interim injunctions;
- setting aside;
- judicial reviews; and
- winding up.

To facilitate the online hearings process, the judiciary has also issued guidelines on conduct proceedings via Skype for Business, Skype or other appropriate video conferencing platforms (notably, the use of Zoom is prohibited).

The above is expected to continue to apply, or be expanded, until the end of the CMCO on 9 June 2020.

On 11 May 2020, pursuant to a press release by the judiciary, the following standard operating procedures with particular regard to court hearings were announced, including that:

- as far as possible, the courts may conduct online hearings with regard to the interest of justice, the nature of the matter and public health and safety; and
- if cases are to be heard in a physical courtroom, they will be heard in open court and on a staggered basis.

Comment

Due to the COVID-19 outbreak and the implementation of the MCO and the CMCO, conducting legal proceedings through online platforms is becoming the new normal in the legal industry for social distancing purposes.

The chief justice has also indicated that amendments to the relevant procedural and substantive laws and the drafting of a practice direction outlining the conduct of online hearings are in the pipeline. With all of the present proper measures and guidelines in place, parties can rest assured that they will continue to have access to justice during the COVID-19 pandemic.

For further information on this topic please contact [Gan Khong Aik](#) or [Lee Sze Ching \(Ashley\)](#) at [Gan Partnership](#) by telephone (+603 7931 7060) or email (khongaik@ganlaw.my or

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Endnotes

(1) Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020; Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No 2) Regulations 2020; Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No 2) (Amendment) Regulations 2020; Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No 3) Regulations 2020; Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No 4) Regulations 2020.

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