**INTERNATIONAL JOURNAL OF LAW,
GOVERNMENT AND COMMUNICATION
(IJLGC)**www.ijlgc.com**THE LEGAL IMPACT OF COVID-19 ON SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs) IN MALAYSIA**

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**Abstract:**

The COVID-19 pandemic has impulsively posed new challenges to many businesses and companies around the globe due to travel and business restrictions. COVID-19 which has been declared a pandemic by the World Health Organization (WHO) on the 11th of March 2020, which originated from Wuhan City, the People's Republic of China has consequently crashed the downtime of the economy in Malaysia and caused a significant impact on the Small-to-Medium Enterprises (SMEs) business operation. The present study employs a mixed methodology, which includes an analysis of primary and secondary legal sources, and a questionnaires survey. The aim of this research is to identify the legal impacts on SMEs due to the COVID-19 pandemic influences on a business operation which will further assist policymakers to develop actionable policies and support the growth of SMEs in Malaysia. The government should be transparent in disseminating the post-COVID-19 data because it can be a thrust for the SMEs in planning their future agenda to "bounce back" the economic sectors effectively.

Keywords:

Regulations, COVID-19, Pandemic, Laws, Small-Medium Enterprise

Introduction

WHO has made an announcement on the 11th of March 2020 regarding the status of the novel coronavirus (2019-nCov) or later known as COVID-19 from disease outbreak or epidemic to pandemic (World Health Organization [WHO], 2020). WHO later defined the COVID-19 as an infectious disease caused by a newly found coronavirus which is easily transmitted from human-to-human infection through droplets of saliva from coughs or sneezes of coronavirus carrier. The word pandemic originated from the Greek word “pan” which means “all” and *demos* “the people” but is normally used to refer to a widespread epidemic of contagious disease throughout the countries or more continents at a very similar time (Honigsbaum, 2009). WHO simply defined a pandemic as the spread of a new disease globally (WHO, 2020), while a disease outbreak is a disease case that appeared in excess of normal expectancy (WHO, 2020).

WHO has issued beforehand a Travel Advice for personal and food hygiene, cough and sneezing etiquette, social distancing (up to one metre from people with symptoms such as fever, cough, or breathing problem), and self-isolation (up to 14 days) but consistently recommended against travel restrictions to countries that affected with COVID-19 outbreak due to its effectiveness in precluding the importation of disease only at early phase but may have a severe impact on the country’s economy and society (WHO, 2020). The rapid increase in COVID-19 cases in Malaysia since early January 2020, however, has led to the first announcement made by the Prime Minister, Muhyiddin Yassin, on the 16th of March 2020 to introduce a national drastic measure which was to implement a Movement Control Order (MCO) in the country for the period between 18th and 31st of March 2020 in order to block the transmission of the pandemic in the country.

Later, the official statement made by the National Security Council (MKN) on the 17th and 18th of March 2020 outlined the Frequently Ask Questions (FAQs) and the list of essential services that are allowed to be operated during the MCO period (Prime Minister’s Office [PMO], 2020). Due to this announcement, all businesses and services deemed to be non-essential were asked to close in accordance with Section 11(2) of the Prevention and Control of Infectious Disease Act 1988. Any person or company who is found guilty of the offence can be sentenced to a term not exceeding two years in prison or fine or both, in respect of second offence or subsequent offence, imprisonment not exceeding 5 years or fine or both; and lastly, in respect of continuing offence, a further fine not exceeding two hundred ringgit for every day the offence continues. Director-General or any public officer authorized for this purpose may compound any offence under this Act, which has been prescribed by regulations as compoundable, by collecting from the offender a sum of money not exceeding RM1,000. This decision also made Malaysia score the stringency index of 85.71 based on the Oxford COVID-19 Government Response Tracker (The University of Oxford, 2022), as of 30th March 2020 due to certain indicators such as school closure, public events cancellation, travel restrictions which have ranked Malaysia among the strictest countries, with red stringency legend in the world (Hale et al., 2020).

Due to the extension of MCO for the third time, SMEs are the most affected sector due to their role as the backbone of the Malaysian economy. The MCO has disrupted many business and service operations due to shop and factory closures as well as supplies breakdown. In an attempt to assess the legal effects on SMEs, we discuss the regulations governing MCO and SMEs according to the applicable laws in Malaysia which can be focusing on primary and secondary sources of laws. The present study further assesses the understanding of SMEs towards

compliance with the laws and explores mitigating dynamics should SMEs adopt to sustain and survive during the COVID-19 outbreak.

Research Methodology

A Mixed Methodology is employed in conducting the present study. Thus, this paper composes a descriptive and detailed content analysis of primary sources of laws such as statutes or regulations and secondary sources of law such as law reviews as this method is suitably used for sensitive topics (Satu & Helvi, 2007). A survey, which is quantitative in nature also has been conducted for this research and distributed among decision-makers within local SMEs using an online platform, i.e., Google Docs. Each respondent is required to log in using his or her email to ensure uniqueness and a genuine profile during the data collection period.

Literature Review

The performance of SMEs in 2018 has recorded a contribution of RM551.7 billion or 38.3% of the total national GDP and counted RM171.9 billion or 31.16% of the total Malaysian exports (Department of Statistics, Malaysia [DOSM], 2020). In 2017, the Department of Statistics, Malaysia (DOSM) also reported that SMEs have employed 5.7 million persons, or 64.7% of the total employment in the country (DOSM, 2020). According to Tahir, H.M (2018), microenterprises and SMEs play a vital role in nurturing growth, income, and employment in Malaysia's economy.

Based on the Guideline for New SME Definition issued by (SME Corporation Malaysia [SME Corp], 2013), a government agency has categorised the SMEs into the following categories;

Category	Micro	Small	Medium
Manufacturing	Sales less than RM300,000 or Staff of less than 5.	Sales between RM300,000 and RM15 million or Staff between 5 and 75.	Sales more than RM15 million, but not exceeding RM50 million or Staff of from 75 but not exceeding 200
Services and Other Sectors	Sales less than RM300,000 or Staff of less than 5.	Sales between RM300,000 and RM3 million or Staff between 5 and 30.	Sales more than RM3 million, but not exceeding RM20 million or Staff of from 30 but not exceeding 75

Table 1: Categories of SMEs

Source: SMECorp, 2013

Apart from the Prevention and Control of Infectious Disease Act 1988, SMEs also must comply with other relevant laws during the unprecedented situation in Malaysian history despite no business as usual or private sector activities which has caused cash flows crisis for the company, especially to non-essential services. This is consistent with the major concern raised by the big four audit firms (EY, 2020, Deloitte, 2020, KPMG, 2020, and PwC, 2020) that

addressed the significant cash or liquidity problem among businesses during the COVID-19 outbreaks due to operational disruption for months, unclear long term cash forecast, supply chain problem, weak receivables accounts, and external economic shock. Failure to put control measures in a timely manner will severely impact the main stakeholders which are Shareholders, Financiers, Customers, Suppliers, and Employees (KPMG, 2020).

DOSM's recent special survey on the Effects of Covid19 on Economy and Individual (Department of Statistics Malaysia, 2020) reported that self-employed respondents were the most affected income group who faced a 94.8% of reduction in monthly income. 35.5% of the self-employed and 28.3% of the employer respondents were having a huge drop in monthly income for more than 90% since the MCO which Agriculture (such as livestock and fishing) and Services (such as accommodation and food service) sectors contributed about 70% and 54.2% reduction in monthly income respectively. In addition to that, businesses categorised under Arts, Entertainment and Recreation reported having laid-off employees about 38% followed by Food services (35.4%) and Fishing (33%). On the other hand, businesses that were categorised under Accommodation reported having offered unpaid leave to their employees (22.2%) followed by Food services (19.1%) and Forestry and logging (17.6%). Surprisingly, 46.6% of the self-employed and 23.8% of the employer respondents were reported to have significant loss of their jobs or businesses due to COVID-19 outbreaks. More than 71.4% of the self-employed respondents also reported having cash for less than one month since the MCO. The report, however, did not classify the self-employed and employers according to the national definition of SMEs. There is also a lack of information on respondents' profiles, especially for the position held or age group to indicate and identify the decision-making authority within the companies or businesses.

Conceptual Framework

The present study adopts the compliance theory to understand why SMEs must comply with the COVID-19-related regulations and how they can comply with the existing laws. Compliance theory is an integration of ideas from classical and partaking management models that are used as a method of organisational structure (Lunenburg, 2020). Previous studies (Becker, 1968), however, discussed the compliance among firms from an economic context and further suggested optimal guidelines or resolutions deal with illegal behaviour which is to monopoly income by charging prices lower or producing more than is required while ignoring a collusive arrangement which consequently leads to a non-compliance. On the contrary (Etzioni, 1975), proposed the typology of compliance explaining a combination of power and involvement of firms or organisation through a matrix of compliance variables such as Coercive, Remuneration, normative (kinds of power), and Alienative, Calculative and Moral (Kinds of involvement). Davos (2014), in his book, observed that economic compliance of theory relies upon the economic deterrence approach or social and psychological approach, or a combination of both. Etienne (2010) further proposed compliance as a goal-oriented method to compliance which is something to be achieved instead of 'automatic' behaviour.

Furthermore, Mankiw (2010) presented an income circular flow diagram explaining the relationship between firms and households in an economy where firms are paying wages to labour in exchange for production output while households are paying the cost for each good produced in exchange for the price. Baldwin (2020) later proposed flow disruptions occurred during the COVID-19 outbreak in the modified circular flow diagram such as bankruptcies among households and firms due to retrenchment or reduced income, delayed investment due

to supply chain issues, and factory closure or shortage of goods manufactured, and pending orders for export due to financial crisis effect with the establishment of other economic roles which are government, financial sectors, and global demand.

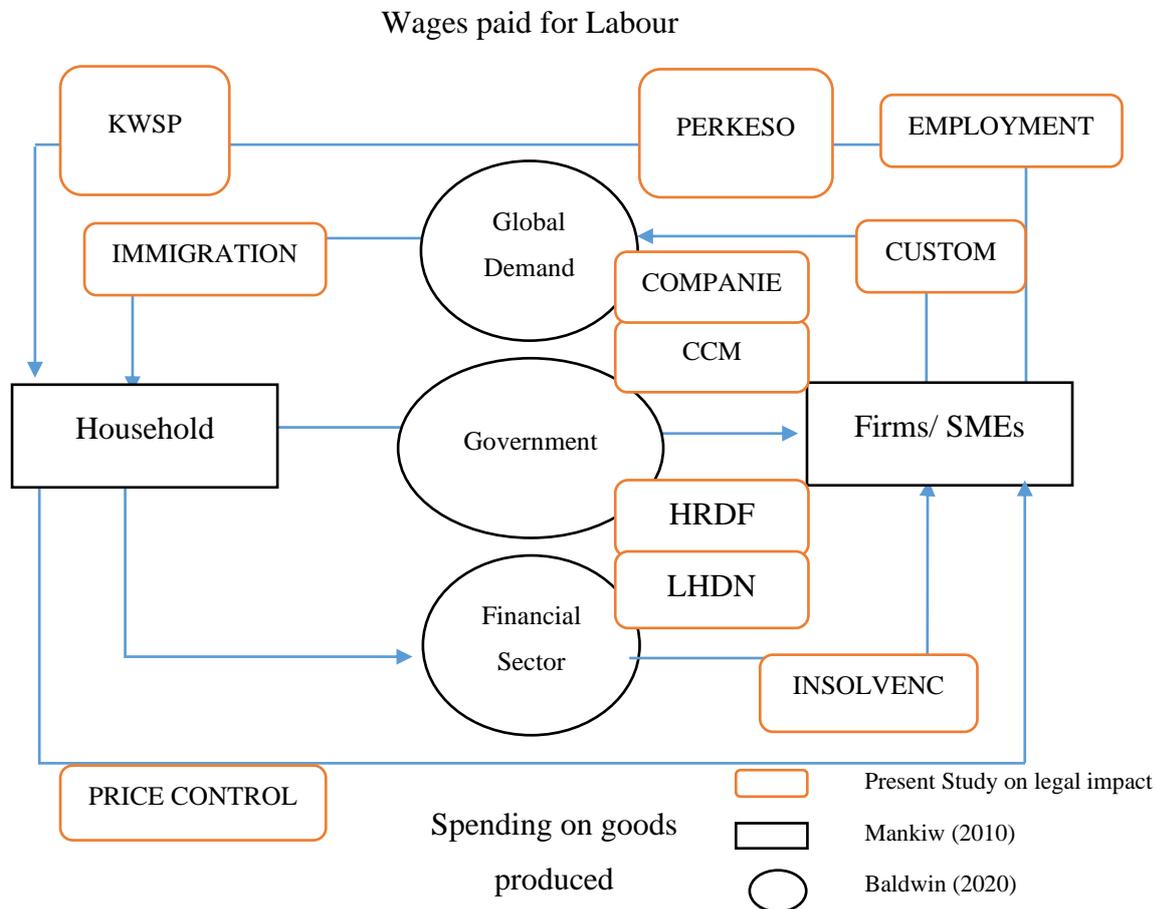


Figure 1: Illustration of Legal Impact on The Circular Flow of the Diagram

Source: Mankiw, 2010 & Baldwin, 2020

The figure shows the legal impact of COVID-19 on the Firms or SMEs in its economic relationships with the government such as statutory and tax regulations, financial sectors such as insolvency regulation, global demand such as contracts with suppliers, immigration rules or custom requirements and labours or household on the employment, EPF, KWSP or price control regulations. By using this framework, the present study fills the gaps in the compliance with relevant laws during the unprecedented situation by firms or SMEs and explores the understanding states of SMEs toward compliance with the laws which can be categorised into four which are primary laws related to COVID-19 outbreak, business entity, transaction and industry.

Primary Laws Related to the COVID-19 Outbreak

The Malaysian government has invoked the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) 2020 [Act 829], Prevention and Control of Infectious Disease Act 1988, and Police Act to impose the MCO nationwide.

Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) 2020[Act 829]

Due to the outbreak of COVID-19, this law has been passed in controlling the impact of COVID-19. It is an act to provide for temporary measures to reduce the impact of COVID 19 through modifying certain relevant statutes such as the Limitation Act 1953, Hire Purchase Act 1967, Consumer Protection Act 1999, Commercial Vehicles Licensing Board Act 1987, and others.

Prevention and Control of Infectious Disease Act 1988

Part II of the First Schedule of the Act obviously, Covid-19 is not listed therein. However, this new disease could fall under the category of “*any other life-threatening microbial infection*” under the said schedule. Section 10 of the Act imposes a duty on every adult occupant in a house who becomes aware of the existence of any infectious diseases on any premises to notify the case through notice with the least practicable delay to the nearest district health office, or Government health facility, or Police station, or Nearest village head. The same section also makes it mandatory for any medical practitioner including private clinics, polyclinics, and hospital who treats or becomes aware of the existence of any infectious diseases in any premises to notify the case through notice with the least practicable delay to the nearest Medical Officer of Health.

Section 11(1) of the Act also authorises the Minister of Health, if satisfied to declare that area to be an infectious local area which is in this case, the announcement of the red zone which will be put under enhanced MCO. It is an offence for anyone who knows or has reason to believe that he is suffering from infectious disease to expose other persons to the risk of infection by his presence or conduct in any public place or any other place used in common by persons other than family members and household (except places where he obtains medical treatment). This is provided for under Section 12 of the Act. Any person who disobeys any lawful order, directions, or restrictions imposed by any authorised officer or has breached any rules or regulations made under the Control of Prevention and Control of Infectious Diseases Act 1988 commits an offence under the said Act, shall be liable to the Penalties under Section 24 and Section 25 of this Act as mentioned earlier.

Police Act 1967

The Police Act of 1967 states that the police or known as Royal Malaysia Police (PDRM) can order Malaysians to stay indoors if needed. Section 31 of this Act reads:

“(1) A Commissioner or a Chief Police Officer may, if he considers it necessary in the interest of the security of Malaysia or any part thereof or public order, by order required, subject to such conditions or exemptions as he may deem expedient... to remain within doors between such hours as may be specified therein;”

So, if it's in public interest and safety, Malaysian police, and PDRM has the right to ask everyone to stay indoors however that very same section goes on to say:

“(4) No order made under subsection (1) shall remain in force for more than twenty-four hours from the making thereof.”

Hence, all the states in Malaysia have been gazette by the government as infected regions (Federal Government Gazette P.U.(A) 87, 2020). To control the people’s movement, PDRM is allowed under Sections 24, 25, and 26 of the same Act to inspect and erect roadblocks on the roads or shut highways to preclude people from leaving certain areas without a valid reason.

Senior Minister of Defence, Ismail Sabri Yaakob, as then was, however, reported on 6 April 2020 that the National Security Council (NSC) is responsible to issue directives regarding non-essential business during the MCO (News Straits Times, 2020). Section 5 of the National Security Council Act 2016 states the powers of the council, albeit any other written law, to issue directives to any government entity pertaining to national security. Hence, NSC is authorised to do so under the existing legal framework which is corresponded with its initial Frequently Asked Questions (FAQs) issued on 17 March 2020 that the MCO is fully governed under the above two Acts only which have outlined the following six strict orders (Majlis Keselamatan Negara [MKN], 2020):

- Prohibition of public movement and gatherings including religious, sports, social and cultural activities;
- Prohibition of Malaysian from traveling overseas;
- Prohibition of tourists or foreigners from traveling to the country;
- Closure of all pre-schools, schools, and pre-universities.
- Closure of all public and private higher institutions and training institutions; and
- Closure of all government and private premises except for essential services.

The MCO has disrupted many business operations nationwide especially SMEs due to the closure of premises like factories and shops and travel ban unless the companies are classified under the essential businesses or services. The federal government has gazetted the essential services on 18 March 2020 as below (Federal Government Gazette P.U.(A) 91, 2020):

1. Banking and finance
2. Electricity and energy
3. Fire
4. Port, dock, and airport services and undertakings, including stevedoring, cargo handling, pilotage, and storing or bulking of commodities
5. Postal
6. Prison
7. Production, refining, storage, supply, and distribution of fuel and lubricants
8. Healthcare and medical
9. Solid waste management and public cleansing
10. Sewerage
11. Radio communication including broadcasting and television
12. Telecommunication
13. Transport by land, water, or air
14. Water
15. E-commerce
16. Defence and security

17. Food supply
18. Wildlife
19. Immigration
20. Customs
21. Hotels and accommodations
22. Any services as determined by the Minister of Health as essential or critical to public health or safety.

Nonetheless, the list was later reduced to ten items on 31 March 2020 which excluded hotels, port services, production, fire, wildfire, immigration, customs, and prison (Federal Government Gazette P.U.(A) 109, 2020), and added up to fifteen items on the 14 April 2020 which excluded fire, wildfire, immigrations, customs, and prison (Federal Government Gazette P.U.(A) 116, 2020). In addition to that, the federal government also has seen gazette eighty-two more hotels as quarantine stations nationwide (Federal Government Gazette P.U.(B) 201, 2020).

Primary Laws Related to Business Entity

Employment Act 1955/ Minimum Wages Order

The said Act defined an employee as “*a person or group of persons’* while an employer ‘*as any person who has entered into a contract of service to employ any other person as an employee*” (Attorney General’s Chambers [AGC], 2022). SMEs that employ any other person will consider employers hence must always adhere to the said Act.

SMEs that are hit very badly are responsible by the laws to pay employees wages in a timely manner as stipulated in Section 19 that employer must pay their employees not later than the seventh day after the last day of any wage period as the time of salary payment. The FAQs issued by the Ministry of Human Resources also confirmed that employers must pay their employees in full during the MCO period and for essential services to reduce on-site workers by 50% (Jabatan Tenaga Kerja Semenanjung Malaysia, 2022). The FAQs further explained that the employer must pay hourly contracted employees, if any the minimum wages according to the Minimum Wages Order 2020 (‘2020 Order’) which was gazetted on 10 January 2020 will come into operation on 1 February 2020. Christopher and Lee Ong (2020) explained that firms must pay minimum wages no less than RM1,100 per month under the Minimum Wages Order 2018 or about a 9% increment this year. Failure to do so, employers will liable to pay a minimum of not more than RM10,000 for each employee as an offence under Section 23 of the National Wages Consultative Council Act 2011.

In a situation of retrenchment, the employer shall pay the terminated employees not later than the day on which such employment contract terminates as stipulated in subsection 11 (1) or of Section 12 Payment on normal termination of the contract. Another section 21 (1) of the said Act stipulated that;

“Where an employer terminates the contract of service of an employee without notice in accordance with subsection 13(1) or (2) and paragraph 14(1)(a)— (a) the wages, less any deductions which the employer is entitled to make under section 24, earned by such employee up to and including the day immediately preceding the day on which the termination of the contract of service takes effect; and (b) in addition, where the employer terminates the contract of service under subsection 13(1), the indemnity

payable to the employee under that subsection, shall be paid by the employer to the employee not later than the day on which such contract of service is so terminated.”

Retrenchment according to Cambridge Dictionary means an act of spending less or cost reduction or where the employer does not need staff (Cambridge.org, 2022). Donovan and Ho (2020) are firing the employee who has become redundant within the organisation. According to Section 25(F) and (N) of the Industrial Dispute Act, 1947 retrenchment is the termination of the workman for whatever reason except for voluntary retirement, retirement due to age, non-renewal of contract, and ill-health.

Marsono and Joseph (2008), however, saw that the Malaysian Code of Conduct for Industrial Harmony 1975, a guideline to employers to do the selection of employees to be reduced is not closed and followed by employers, especially when using the LIFO principle (Last-In-First-Out) as the possibility of mala-fide risk in retrenching staff may arise. Christopher and Lee Ong (2020) also opined that the guideline issued by the Ministry of Human Resources during COVID-19 do not have any legislative impact however employers are advised to follow them.

In addition to that, SMEs cannot terminate or reduce any local staff, unless he has first terminated any foreign staff in a similar capacity. Failure to do so, SMEs that commit any offence shall be liable and fined not exceeding RM10,000 as stipulated in the said section under general penalty. Other non-compliance in relation to rest of days, overtime, holidays, annual leave, and sick leave also will be decided and imposed by the court.

Companies Act 1965

Several requirements according to Companies Act 2016 (Act 777) (AGC, 2022) such as the Board of Directors meeting, Annual General Meeting (AGM), etc. have seen very difficult to perform during the travel and gathering restrictions. In specific to sections 340(4), 258(1) and 259(2) of the said Act, the Registrar of Companies has issued a directive that provides an extension of the timeframe for company Submission which includes financial statements and AGM for three months, however, companies must inform the CCM to avoid any misuse. The extension fees of RM100 also will be waived by the government (Suruhanjaya Syarikat Malaysia [SSM], 2020).

Thomas Philip (2020) commented that the postponement is understandable to ensure the safety of shareholders of the company to be physically present at the AGM but the main issue considered unresolved is whether the announcement is legally binding or the force of law.

Jimmy (2020) opined that the three approaches stipulated under the Restructuring under Companies Act are Scheme of Arrangement (Division 7), Corporate Voluntary Arrangement (Division 8), and Judicial Management (Division 8) were not an easy task for any business entity. Baker McKenzie (2020) however, is concerned that this unprecedented situation also affected big conglomerates, especially in aviation, tourism, and construction to assess their financial position and take part in a corporate rescue mechanism under the said Act to restructure their debt obligation.

Companies Commission of Malaysia Act 2001/ CCM

The Registrar of Companies also has issued a directive under section 20C of the Companies Commission of Malaysia Act 2001 and Practice Note No. (PN) 3/2018 regarding the extension

discussed earlier pursuant to the announcement by the Minister of Domestic Trade and Consumer, Alexander Nanta Linggi on 10 April 2020 to ease the burden of affected companies due to COVID-19 outbreak. CCM has issued FAQs to allow extension of statutory submission which is 30 days after the MCO period ends (SSM, 2020). CCM also has activated online submission for companies during the MCO period and extended Compliance Campaign 2020 towards Companies Act 2016 until June 2020.

These initiatives allow SMEs to fulfil their obligation within the ample timeframe allowed by the said Act.

Employees Provident Fund Act 1991/KWSP

In assisting SMEs to survive amidst the COVID-19 pandemic, Employer Advisory Services (EAS) was introduced. The Employees Provident Fund (EPF) would conduct the Employer Consultation Service on April 15, 2020, as part of the efforts, to facilitate the cash flow of companies. Through this measure, EPF offers advisory support to employers. Customized plans for employers' contributions will be offered to affected businesses (Kumpulan Wang Simpanan Pekerja [KWSP], 2020). In addition, the federal government also has gazetted to allow a withdrawal up to RM500 per month from Account 2 of EPF members.

In relation to that, EPF also launched another measure named as Employer Covid-19 Assistance Programme (e-CAP) as an initiative to support SMEs to remain solvent during this COVID-19 pandemic. SMEs are given options on whether to defer to restructuring employers' contributions (KWSP, 2022)

Employees' Social Security Act 1969/PERKESO

PERKESO is the body that administers social security matters and has issued a guideline on Wage Subsidy Programme (WSP), Employment Retention Program (ERP), and Employment Insurance System (EIS) (Perkeso, 2022) as part of the Stimulus package announced by the Prime Minister of Malaysia to protect job security. In addition to that, PERKESO confirmed that the COVID-19 is qualified to be considered as a disease under the 5th Schedule of Employment Social Security Act 1969 as an occupational disease (MSN, 2022). On 27 April 2020, PERKESO issued a guideline for a screening program to test employees including foreign workers that allowed to work during the MCO (Perkeso, 2020).

Other Related Statutes

Section 19 of Pembangunan Sumber Manusia Berhad Act 2001 stipulated that the Minister has the authority to gazette an exemption to any employers from paying the levy by ordering published (AGC, 2016).

Meanwhile, in relation to Income Tax Act 1967, small and medium enterprises (SMEs) are allowed to postpone payment of income tax instalments for three months beginning April 1, 2020. Medina (2020) summarised that Laos has taken additional measures to exempt certain employees earning 5 million kips (RM2500) from paying personal income tax in April, May, and June. either from the public or private sectors. Malaysia, nevertheless, has a higher threshold of income tax where the first RM5,000 will not be taxed. In addition to that, the federal government also has a gazette to allow an exemption to a not-for-profit company limited by a guarantee incorporated under the Companies Act 2016 that exclusively operated only for religious purposes (Federal Government Gazette P.U.(A) 139, 2020).

Primary Laws Related to Business Transaction

Immigration Act 1959/1963

SMEs who employ expatriates must comply with the changes in the Immigration Regulations. The Minister of Home Affairs, Hamzah Zainuddin has issued a guideline on the MCO at Malaysian borders to restrict Malaysian from traveling abroad except for diplomats and permanent residents in other countries, and many other travel restrictions on foreigners or tourists (MKN, 2020). Subsequently, the FAQs Related to MCO were issued by the Department of Immigration, Malaysia on 21 Marc 2020, and several travel restrictions were put in place as below (MKN, 2020);

- Everyone entering Malaysian borders will be subjected to self-quarantine for 14 days.
- Expatriates who are currently residing outside the country are only allowed to return to Malaysia within three months after the MCO period ended.
- Expatriates or foreigners who have their working permits expired can request a special pass from the Department of Immigration, Malaysia.
- Malaysian citizen or non-citizen who works as lorry driver can cross country if delivery is made for essential services.
- Malaysian who works in Singapore or other countries is not allowed to return to the country during the MCO period.
- No movement is allowed between West and East Malaysia.
- Tourists or Foreigners can leave the country

SMEs that have business deals with the affected countries such as South Korea, Iran, Italy, and China will have difficulties having business visits from such nationalities.

Insolvency Act 1967

The Minister of Domestic Trade and Consumer, Alexander Nanta Linggi has issued a directive on 21 April 2020 to increase the amount of indebtedness to not exceeding RM50,000 according to section 466(1)(a) of the Companies Act 2016 for the period between April and December 2020 (SSM, 2021). This is seen as one of the immediate measures taken to support affected businesses due to the outbreak and to reduce the number of bankrupts among SMEs.

Skrine (2020) nevertheless, argued that the measure taken was not sufficient to prevent bankruptcy as the CCM has no local standi to amend the Insolvency Act 1967 related to the specific timeframe and offence, which comes under the purview of the Malaysian parliamentary. (Medina, 2020) also commented that the new Singapore's COVID-19 Temporary Measures Act (COVID-19 Act) is passed to provide relief to affected businesses in fulfilling their contractual obligation, suspending any contractual obligation for six months, and changing the bankruptcy threshold for individuals and corporate. However, the said Act temporarily allowed companies to continue business as usual while technically insolvent to do so.

Primary Laws Related to Industry

Control of Supplies Act, 1961

The ministry would take stern action against traders who violated the Control of Supplies Act 1961. Retailers are now required to possess a license to sell three controlled items - sugar, flour, and cooking oil - to avoid hoarding and abuse.

The government has also fixed new ceiling prices for face masks to ensure that there is enough supply during the ongoing MCO aimed at halting the spread of Covid-19 in the country. Domestic Trade and Consumer Affairs Minister Datuk Alexander Nanta Linggi said the prices were fixed after the ministry took into consideration a spike in the cost of imported materials used to produce face masks. In a statement, Nanta said the ceiling prices were gazette under the Price Control and Anti-Profiteering (Determination of Maximum Price) Order 2020 (Federal Government Gazette P.U.(A) 92, 2020). Any trader found guilty of selling above the ceiling price may face a maximum fine of RM100,000 or imprisonment of three years, or both if found guilty. Companies, on the other hand, could be fined up to RM500,000 or compounded up to RM250,000 if found guilty of exceeding the ceiling price.

Customs (Prohibition of Export) (No. 2) Order 2020 under the Customs Act 1967

The ministry banned the export of face masks as gazette under the Customs (Prohibition of Export) (No. 2) Order 2020 under the Customs Act 1967. The ministry was also working closely with the Customs Department, the Anti-Smuggling Unit, and RELA to curtail the smuggling of controlled items to neighbouring countries (Federal Government Gazette P.U.(A) 88, 2020).

Custom Appeal Tribunal also will be closed during the MCO, however existing cases will be evaluated from home by the respective officers. No new case will be accepted during the period (MKN, 2020).

Mitigating Dynamics Available to SMEs during COVID-19

Due to the enforcement of MCO, in assisting SMEs in their struggle to sustain their businesses, several government aids have been introduced. These include PRIHATIN Economic Stimulus Package, PRIHATIN Special Grant, Wage Subsidy Program (PSU), and Moratorium I-Sinar KWSP and PERMAI (Noor et al., 2021).

For instance, first, the government of Malaysia (PMO, 2020) provides a Special Relief Facility for SMEs amounting to RM5 billion, with the interest rate being reduced from 3.75% to 3.5%. Second, an increase from RM1 billion to RM6.8 billion for all Economic-based sectors aiming to increase funding access to SMEs. The third is to provide an additional RM500 million in micro-credit schemes, regulated and monitored by Bank Simpanan Nasional. The fund comes with 2% and requires no guarantee. The amount for individual entrepreneurs under the scheme is increased from RM50,000 to RM75,000. All entrepreneurs ranging from services, transportation, and creative industry are eligible to apply. Fourth, SMEs who have recorded less than four years of business can utilize BizMula-I and BizWanita-I provided by Syarikat Jaminan Kredit Malaysia Berhad (CGC) for up to RM300,000. Fifth, Business Funding Guarantee Firm (SJPP) will provide a guarantee of up to RM5 billion besides increasing up to 80% guaranteed interest for struggling SMEs.

Michel Kang however reported in The Star on 28 March 2020 that the existing government's aid seems to aid individual citizens but not the Small Medium Enterprises (SMEs). SMEs are facing the risk of closing due to the unavailable means to operate a business, at the same time bearing the overhead cost and the operative cost. From the National Stimulation Package, SMEs are given loans and credits amounting to RM4.5 billion however this works on an application basis. Special Relief Facility, amounting to RM500 million under the micro-credit scheme. SMEs with less than four years' business records, can take the advantage of "BizMula-I" and "Biz-Wanita-I" through Credit Guarantee Corporation for the financing of up to RM300,000, among others.

Bank Negara Malaysia (2020) in its report concurred that SMEs are a critical component of the Malaysian economy, contributing more than a third of gross domestic product (GDP) and providing job opportunities to more than four million workers in Malaysia. Banking institutions are the main source of financing for SMEs, providing more than 90% of total financing. The provision of SME financing is also complemented by the Development Financial Institutions, Bank Negara Malaysia's Funds for SMEs, and Government Funds.

From an international perspective, the Organisation for Economic Cooperation and Development (2020) Outlook Interim report in March 2020 projects the decline of GDP of all countries by half percentage to 2.4% due to COVID-19. It could further slow global growth up to 1.5%. Since March 2020, stocks have plummeted and exchanged negatively causing severe uncertainties in the months to come. The OECD has also compiled reports by international financial institutions on the forecasts of countries and the impact of industry reversals. For instance, UNCTAD has calculated that the impact of the coronavirus in China has cost global value chains 50 billion USD in exports. In addition to that FDI could shrink by 5- 15%. The Asian Development Bank also suggests an impact of between 0.1 and 0.4% of global GDP. The IMF, on one hand, has published several blogs with reflections on the expected effect and policies required. This highlights that while the drop-in manufacturing is comparable to the start of the 2008 global financial crisis, this time the decline in services appears greater, reflecting the consequences of lockdowns and social distancing, especially in urban settings.

Nevertheless, the introduction of the National Economic Recovery Plan (PENJANA) which was announced in June 2020 may provide additional support for SMEs. There are 40 short-term plan initiatives and 24 initiatives worth RM14.5 billion prepared for SMEs. The increasing confidence among SME entrepreneurs may be illustrated through surveys conducted by SME Corporation Malaysia where 17 percent of 982 respondents were positive that their business could bounce back in three months after receiving aid from PENJANA (SMEECorp, 2022). Thus, though prior government aid may focus on individuals, PENJANA may be solid support for SMEs in Malaysia.

Respondent Profiles

The survey has collated data from 33 different rankings or posts of the respondents conducted online.



Figure 2: Respondent profiles – Classification of Business

Source: SMECorp, 2020

Figure 2 shows the sampling population is largely dominated by SMEs that are classified under Services and Other Sectors - Sales Turnover Ranged Between RM1 to RM300,000 which contributed 45.5% of the total respondents followed by 27.3% and 12.1% from Services and Other Sectors - Sales Turnover Ranged Between RM300,000 and RM3 million and Ranged Between RM3 million and RM20 million respectively. Only 9.1% and 6% of respondents who participated are classified under Manufacturing industry - Sales Turnover Ranged Between RM1 to RM300,000 and Ranged between RM300,000 to RM15 million. No participation from medium class, i.e., Manufacturing industry - Sales Turnover Ranged Between RM15 million and RM50 million. In addition to that, only 36.4% of the total respondents are listed under Essential services that allowed them to continue business operations as compared to other 42.4% that listed as non-essential services. Nevertheless, 21.2% of respondents are unsure about their status.

Apart from that majority of the respondents held the highest position such as Company Directors (30.3%), followed by Founder/ President (27.3%) and General Manager (24.2%) as shown in Figure 3.

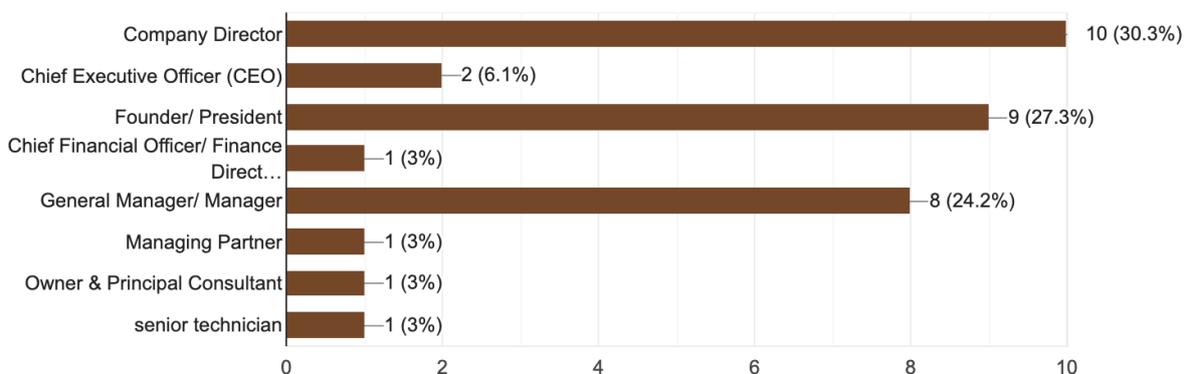


Figure 3: Respondent profiles – Positions Held

Source: SMECorp, 2020

Empirical Results

The majority of the respondents that held the highest position agreed to have a proper understanding of the MCO-related regulations. Otherwise, 15.2% and 30.3% of respondents demonstrated fair and poor understanding of the regulations respectively. Surprisingly, 97% of the total respondents acknowledged the roles of authorities during the enforcement of MCO with most of the respondents having no records of attending any training or workshop regarding MCO related regulations such as the Prevention and Control of Infectious Disease Act 1988/ National Security Council Act 2016/ Article 150 and 40 of the Federal Constitution for the state of emergency.

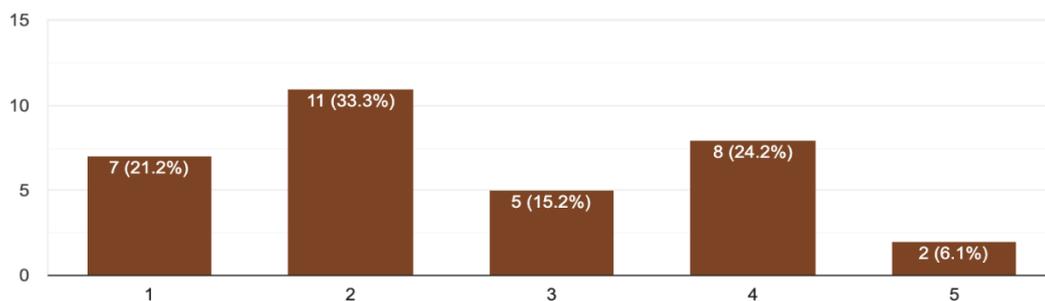


Figure 4: Compliance with MCO Regulations by Respondents

Source: SME Corp, 2020

Apart from that, Figure 5 below demonstrates the compliance towards other applicable laws to SMEs where more than 50% of respondents were closely observed the requirements stipulated under the four acts which are CCM, EPF, PERKESO, and LHDN or Income Tax which are likely to be complied with. The findings also show that the Insolvency, Control of Supplies, Immigration and Companies Act scored below 30% which are tent to be overlooked by SMEs which participated in the survey.

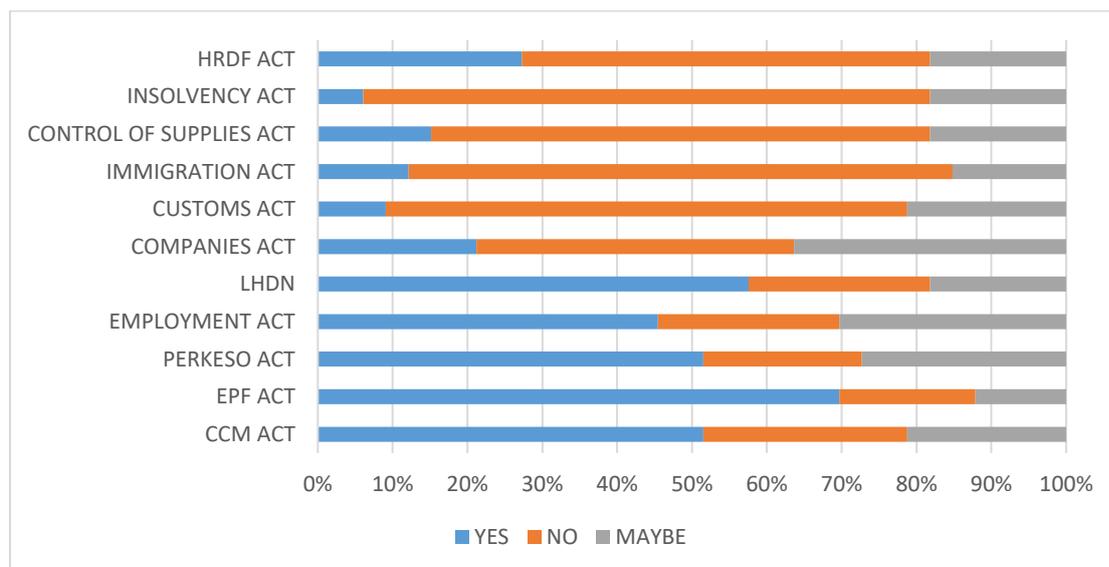


Figure 5: Compliance Towards Laws Related to Business Entity, Transaction, and Industry by Respondents

Source: SMECorp, 2020

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About 66.7% of the total respondents confirmed that there is an impact of MCO on daily business activities. The present study also discovers that 60.6% of the total respondents were not prepared for the MCO, for instance, the absence of business continuity procedures in place which resulted in the monetary loss of RM2.188 million as reported by the respondents in the survey. The present study also revealed that 81.8% of respondents are aware of the legal impacts and the majority of the respondents believe that legal action is the main risk for any non-compliance, followed by cease of operation, bad reputation, and loss of confidence among investors as shown in Figure 6.

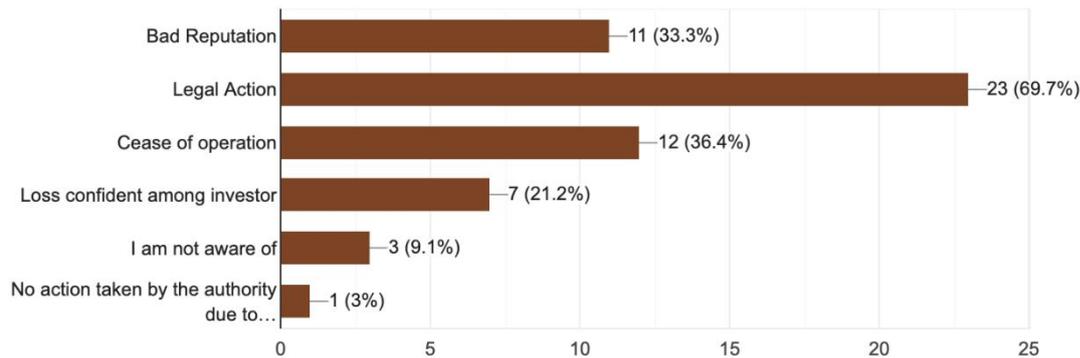


Figure 6: Implications of Non-Compliance by Respondents

Source: SMECorp, 2020

Hence, the results empirically answer the research questions proposed earlier about why SMEs must comply and how the SMEs can comply with the existing laws.

Research Limitation

The present study has potential research limitations due to time constrain and limited economic resources. This could possibly influence the interpretation of end results to be immature and generalised, especially when using the quantitative method (Price & Judy, 2004). The respondent profiles, however, demonstrated the opinion of decision-makers within SMEs from a business and legal perspective which hugely benefit answering the research question. Future research should explore other relevant laws such as *Force Majeure and Frustration* (Contracts Act 1950), *License* (Local Government Act 1976) or *Halal labelling* (Trade Descriptions Act 2011), etc., and collect a larger sample size of respondents among the decision-makers within SMEs.

Conclusion & Recommendation

Based on the income circular flow diagram (Mankiw, 2010, and Baldwin, 2020) the present study fills the gap by discussing the legal impact on the relationship between firms, government, financial sector, household, and global demand, and identifies relevant laws of Malaysia related to SMEs during the COVID-19 pandemic. The present study reveals that the majority of relevant laws will be largely overlooked, based on the goal-oriented approach (Julien Etienne, 2020) due to a lack of understanding among SMEs which took part in the survey. Oates, (2006) suggested that the outcomes of the research which include the unexpected findings will be contributed to the knowledge related to the research question. Thus, the present study contributes further to the field of compliance among SMEs, especially in Malaysia.

Recommendations

Company directors or business owners should always have a “touch base” with the unrepresented measures allowed by laws to defend years of work and protect the seed capital invested in the interim and ex-post the pandemic by complying with local regulatory requirements. This includes adapting to a new norm of running daily business operations like attending a virtual exhibition and meeting statutory requirements, such to conduct Annual General Meetings (AGM) online if permitted.

During the recession, trade associations are suggested to proactively play a role to serve business communities to provide support and guidance on the responsibilities of SMEs to largely comply with the local regulatory requirement related to a business entity, transaction, and industry but not limited to the following;

- Control of Supplies Act 1961
- Customs Act 1967
- Pembangunan Sumber Manusia Berhad Act 2001/ HRDF
- LHDN/ Income Tax Act
- Companies Act 1965
- Companies Commission of Malaysia Act 2001/ SSM
- Insolvency Act 1967
- Employees’ Social Security Act 1969/PERKESO
- Employment Act 1955
- Employees Provident Fund Act 1991/KWSP
- Immigration Act 1959/1963

The relevant legal measures adopted by the government should be followed strictly in ensuring the effectiveness of curbing the COVID-19 pandemic. Without the strict compliance of the said legal measures, Malaysia will definitely be unable to counter or curb the spread of the COVID-19 outbreak and this situation give a vital impact on the sustainability of the economic sector in Malaysia.

Finally, government agencies or policymakers that work closely with the development of SMEs should transparently publish the compliance index among SMEs as part of data series to understand economic trends in the country post-pandemic. This information is very crucial in making sure that the SMEs’ planning to bounce back in the economic sectors effectively can be realised by putting it on the right track. All information should be channelled to the relevant agencies and in the furtherance of the said actions, a special working committee should be established in examining and analysing the said information for the future strategies in facing the impact of COVID-19 pandemic. Through these measures, the information can be benefited for the betterment of all parties.

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