

## COVID-19: The Duty of JMB/MC in Managing the Stratified Development Area during CMCO

The Malaysia government, on 18 March 2020, implemented the Movement Control Order (“MCO”) to curb the spread of COVID-19. On 1 May 2020, the Conditional Movement Control Order (“CMCO”) was announced by the Prime Minister to replace the MCO since 4 May 2020 and various economy sectors have restarted since then. The CMCO was recently extended to 9 June 2020.

The practice of social distancing has been acknowledged by the Director General of Health as an important measure to reduce the rate of infection. One might be concerned about how such practice would be implemented in a high-density residential and commercial stratified development areas even though the residents in a stratified development are required to observe social distancing<sup>1</sup>.

In this article, we discuss the extent of the duties of a Joint Management Body (JMB)/ Management Committee (MC) in a stratified residential property to contain the outbreak of the pandemic during the CMCO period.

### Statutory Duties of JMB/MC & CMCO

The paramount duty of a JMB/MC is to properly maintain and manage the subdivided building or land and to keep the common property in a state of good and serviceable repair<sup>2</sup>. The MC is also the proprietor of the common property of a stratified development area<sup>3</sup> and shall have the powers conferred by the National Land Code on a proprietor in relation to its land. Paragraph 4 of Third Schedule to the Strata Management (Maintenance and Management) Regulations 2015 further provides that the JMB/MC shall control, manage and administer the common property for the benefit for all the proprietor and which shall also include the tenant or occupier of the individual parcel<sup>4</sup>.

In light of the aforementioned duties, the JMB/MC, which is a corporate body, is capable to sue and be sued in its name. Hence, a vital aspect that shall not be overlooked is, what is the extent of the duties of the JMB/MC in managing the stratified property during the CMCO period. The failure of the JMB/MC to comply with such duty may attract legal liabilities to be imposed upon the JMB/MC and its committee members.

Whilst the current CMCO is promulgated pursuant to the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas)(No.6) Regulations 2020 (“Regulations 2020”) from 13 May 2020 to 9 June 2020, there is no express provision spelt out in the Regulations 2020 pertaining to the functions and duties of JMB/MC.

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<sup>1</sup> Q&A 2 of the Guideline issued by the Ministry of Housing and Local Government on 9 May 2020. (“MHLG Guideline”).

<sup>2</sup> Sections 21 and 59 of Strata Management Act 2013.

<sup>3</sup> Section 17B Strata Title Act 1985.

<sup>4</sup> Paragraph 1 of Third Schedule to Strata Management (Maintenance and Management) Regulations 2015.

Generally, the Regulations 2020 prohibit:

- (i) any person to carry out or involved in any prohibited activity<sup>5</sup>;
- (ii) a person to move from one place to another place between states, unless for work purposes<sup>6</sup>; and
- (iii) any person to participate in any gathering or procession, whether for economic, religious, sports, educational and learning, recreational, social, or cultural purposes<sup>7</sup>.

Prohibited Activity is specified in Regulations 2020, among others, include the following<sup>8</sup>:

- (i) entertainment, leisure and recreational activities which may cause a crowd to gather;
- (ii) activities relating to religious, cultural and art festivities which may cause a crowd to gather;
- (iii) business activities which may cause a crowd to gather; and
- (iv) services in barbershops and beauty salons.

A person or a corporate body, who is found guilty of contravening the CMCO, may be fined for a sum of not more than RM1,000.00; imprisoned up to 6 months; or both. If a corporate body violates the MCO, the person responsible for the management of the corporate body may be charged jointly or severally with the corporate body, unless he proves that the offence was committed without his (i) knowledge; and (ii) consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence<sup>9</sup>.

## Standard Operating Procedures and Guidelines for Stratified Management

In line with the enforcement of CMCO, the following are the Standard Operating Procedures (“SOP”)<sup>10</sup> issued by the National Security Council (NSC) on 1 May 2020 in relation to the JMB/MC management office of a stratified property:

- (i) Operation hour: 8 a.m. to 5 p.m.
- (ii) Workforce capacity: 100%

The following SOP shall be observed by the JMB/MC:

- (i) to ensure social distancing of 1 meter;
- (ii) to encourage the use of hand sanitizer or to provide a hand washing space before entering the building or the lift;
- (iii) to measure visitors’ body temperature, those with body temperature higher than 37.5 Celsius are prohibited to enter the building; and
- (iv) to mandate visitors to put on face mask.

<sup>5</sup> Regulation 3 of the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) (No. 6) Regulations 2020 (“Regulations 2020”).

<sup>6</sup> Regulation 6 of Regulations 2020.

<sup>7</sup> Regulation 7 of Regulations 2020

<sup>8</sup> Schedule to Regulations 2020.

<sup>9</sup> Regulation 15 of Regulations 2020.

<sup>10</sup>Standard Operating Procedures , Strata Management <<https://www.mkn.gov.my/web/wp-content/uploads/sites/3/2020/05/NO.-20-Kebersihan-Keselamatan-Pembinaan-Pengurusan-Strata-dan-Kewangan.pdf> >

In view of the CMCO, the Ministry of Housing and Local Government (“MHLG”) had also subsequently issued a set of latest guidelines dated 9 May 2020. Generally, the guidelines by MHLG are consistent with the SOP issued by NSC, such as:

- (i) to ensure social distancing of 1 meter<sup>11</sup>;
- (ii) indoor sports and contact sports are prohibited<sup>12</sup>;
- (iii) operation of swimming pool is prohibited<sup>13</sup>;
- (iv) letting of common facilities such as multipurpose hall, badminton court are prohibited<sup>14</sup>.

## Restricted Access to Common Property

As the proprietor who owes statutory duty to administer the common property for the benefit of all the proprietors in the stratified development area, the JMB/MC is duty bound to close and restrict access to *surau*, swimming pool, gymnasium, all forms of indoor sports venues and contact sports venues, facilities that are utilised to hold social gatherings such as barbeque pit, multipurpose hall, *etc.* This is because entertainment, leisure or recreational activities which may cause a crowd to gather are listed as one of the prohibited activities under Regulations 2020.

For outdoor common facilities such as children playground, outdoor gymnasium, the JMB/MC has to consider whether it is possible to impose social distancing and to limit the number of people to not more than 10 at any one time when such facilities are in operation, in view of the SOP by NSC which states that outdoor activities shall not be more than 10 persons.

## Operation of Business Premises

Under the CMCO, most of the business sectors are allowed to resume operation save for, amongst others, barbershop and beauty salons. The JMB/MC must ensure that the operator of the business premises complies with the prohibitions stated in the Regulations 2020 and the SOP that applies during the CMCO period<sup>15</sup>.

## Restricted Movement for Visitors within the Stratified Development

As regards to visitors, the JMB/MC is suggested to exercise its duty to manage the common property, which includes to restrict the movement of service providers within the stratified development area in view of the requirement to observe social distancing during CMCO. In respect of delivery services, dispatch with body temperature of not more 37.5 Celsius<sup>16</sup> are allowed up to the guard house or any other place designated by the JMB/MC.

<sup>11</sup> Q&A 2 & 4 of MHLG Guideline.

<sup>12</sup> Q&A 12 of MHLG Guideline.

<sup>13</sup> Q&A 12 of MHLG Guideline.

<sup>14</sup> Q&A 5 of MHLG Guideline.

<sup>15</sup> Q&A 3 of MHLG Guideline.

<sup>16</sup> Q&A 11 of MHLG Guideline.

According to MHLG Guideline, as a general practice, visitations are not allowed for stratified residential property during CMCO<sup>17</sup>. However, exceptions are made for the children, siblings or guardian that pass the temperature check at the stratified development to visit a resident:

- (i) who is an elderly that lives alone in the stratified development and requires supervision;
- (ii) who is ill (other than COVID-19 patient and other infectious disease which requires a notification under section 10 of the Prevention and Control of Infectious Diseases Act 1988) or frail and requires supervision;
- (iii) who requires immediate medical intervention; or
- (iv) whose unit has been reported with death (other than COVID-19 patient and other infectious disease which requires a notification under section 10 of the Prevention and Control of Infectious Diseases Act 1988).

Be it as may, Regulation 7(2) of Regulations 2020 permits a person to gather or be involved in a gathering for the following purposes:

- (i) for *Hari Raya Puasa, Pesta Kaamatan* and *Gawai Dayak Day*, subject to such direction of the Director General; or
- (ii) for a funeral, on the condition that the attendance at such funeral shall not exceed 20 people.

Thus, visitation is allowed for the above purposes and the JMB/MC shall comply with the direction issued by the authorities.

### Prohibited Activities Specified Under MHLG Guideline

Further to the above, the activities below are listed as prohibited under the MHLG Guideline<sup>18</sup>:

- (i) short term rental, save for commercial scheme and landed strata properties; and
- (ii) renovation save for commercial scheme and landed strata properties.

Nevertheless, maintenance and repair work for essential services can be carried out during the CMCO period such as, lift maintenance, water, *etc.*

**This article is authored by:**

**Tan Min Lee**  
Partner  
Gan Partnership  
E: [minlee@ganlaw.my](mailto:minlee@ganlaw.my)

**Mah Mun Yan**  
Senior Associate  
Gan Partnership  
E: [munyan@ganlaw.my](mailto:munyan@ganlaw.my)

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<sup>17</sup> Q&A 9 of MHLG Guideline.

<sup>18</sup> Q&A 17 of MHLG Guideline.