

No.	Questions from Members	Answers from Lawyers
1.	How to go about SMEs loan or government loan just announced by government announced on 6/4/2020?	<ul style="list-style-type: none"> ▪ You can visit the following portals:- https://imsme.com.my/portal/en/ (Special Relief Facility (SRF)) https://www.mybsn.com.my/ (BSN Micro Credit Scheme)
2.	If company really can't sustain the worker, can lay off part of the workers or by using the reason of close few branches not profitable to lay off workers? Is it possible?	<ul style="list-style-type: none"> ▪ Yes, you can so long as you can justify that the retrenchment is done in good faith and the surplus workforce is redundant and the retrenchment exercise is carried out subject to the Employment Act 1955 (“EA”) and the Employment (Termination & Lay off Benefits) Regulations 1980 for those earning RM2000 below and manual labourer. As for those earning RM2000 and above, you have to refer to your employment contract.
3.	Tenant can ask rental waiver from landlord during MCO period?	<ul style="list-style-type: none"> ▪ A tenant should first refer to the tenancy agreement (TA) to check if there is a Force Majeure Clause (FM Clause). It is a provision that allows the contractual parties to suspend the contractual obligation in the agreement, in our case here, the payment of rental or termination of agreement, depends on the wordings in the FM Cl. ▪ If there is a FM Clause which provides that the rental should be suspended in the event of any acts of god, pandemic, disease or government action/policy occurs, then the landlord ought to be bound by such clause in that rental may b suspended or the TA to be terminated subject to the wordings set out in the FM clause.

		<ul style="list-style-type: none"> ▪ In the event there is no FM clause in the TA, the tenant may take a more proactive step to negotiate with the landlord on the basis that the current situation is beyond the control of the parties and it is not unreasonable to request for a waiver or suspension of rental. ▪ A landlord may as a gesture of good will, consider to waive the rental or to suspend the rental in order to maintain good relationship with the Tenant in long term. ▪ Prihatin Tambahan announced on 6.4.2020 also provides that a landlord that offers 30% of rental reduction to his or her SME's tenant is entitled to tax reduction equivalent to the amount of rental reduction for the month of April to June 2020. Such incentive may encourage the landlord to offer discount to his tenant.
4.	Who should the one applies for ERP or WIS?	<ul style="list-style-type: none"> ▪ For both the Employment Retention Programme (ERP) and Wage Subsidy Programme (WSP) the application will have to be made through the employer. ▪ Exact particulars and relevant forms can be obtained from the PERKESO's website: https://www.perkeso.gov.my/
5.	Can we deduct staff salary for April before subsidy for wages kicks in?	<ul style="list-style-type: none"> ▪ Based on the FAQ Q.6. 6 of PERKESO dated 1.4.2020, it is clear that when the employer subscribed to WSP, the employer is prohibited to do the following for 6 months (3 months during the WSP and 3 months after the WSP) :- <ul style="list-style-type: none"> a) Retrench workers; b) Instruct the workers to take unpaid leave; and c) Pay cut. <p>However, there is no mention whether you are still eligible for WSP if there was a pay cut prior to the WSP period. As such it will be advisable to get</p>

		confirmation from PERKESO so that not to prejudice your eligibility to apply for WSP.
6.	If company takes subsidy can they still retrench staff before September?	<ul style="list-style-type: none"> ▪ No, you cannot, because one of the pre requisite to qualify for the WSP is that the company must retain its employee for at least 6 months (3 months during the period of receiving subsidy and 3 months thereafter)
7.	<p>(A) PERKESO/SOCSO - Wage Subsidy related of below 75 staff: If paid full salary and no deduction of leaves in March to all staffs, can we now deduct their leaves for March?</p> <p><i>As there is no mention of condition in the newest "Prihatin Tambahan", they only mention cannot retrench staff for 6 months if obtain wage subsidy.</i></p> <p>Question:</p> <ol style="list-style-type: none"> a) Are we still allowed to deduct their leaves in April during MCO? b) b) If they have misconduct during these 6 months, are we allowed to raise warning letter? c) What would be the industry guideline/practice by most SMEs with regards to leaves deduction during MCO? 	<ul style="list-style-type: none"> ▪ Based on the FAQ Q.6. 6 of PERKESO dated 1.4.2020, when the employer subscribed to WSP, the employer is prohibited to do the following for 6 months (3 months during the WSP and 3 months after the WSP) :- <ul style="list-style-type: none"> d) Retrench workers; e) Instruct the workers to take unpaid leave; and f) Pay cut. ▪ However, we take note that there is no mention of leave deduction even in the latest FAQ of PERKESO dated 7.4.2020. Be that as it may, it is not advisable to do so until and unless there is a clear and express directive from Govt or PERKESO so that not to prejudice your eligibility to apply for WSP or breach any conditions under WSP. ▪ We believe WSP and misconduct of employee are separate issues, as such we do not see any reason why employer is not allowed to issue warning letter if the situation genuinely warrants it. If serious misconduct, employer can still dismiss the employee summarily.
8.	(B) LHDN - FAQ on the rental reduction of 30% to tenants for 3 months, landlord will obtain tax relief/rebate?	<ul style="list-style-type: none"> ▪ The rental reduction as mentioned in the speech of the PM on the Prihatin Tambahan is an option given to a landlord where incentive of tax reduction will be given to those who provide assistance to SMEs Tenant, to reduce the rental amount.

		<ul style="list-style-type: none"> ▪ A landlord that provides waiver of rental/ reduction of rental to SMEs Tenants will be entitled to tax relief equivalent to the amount of rental reduction for the months of April to June 2020. ▪ There is an important condition imposed by government whereby the rental reduction must be at least 30 % of the original rental rate for the months of April to June 2020. ▪ There is no clear indication with regard to the mechanism of the tax deduction. Further clarification needs to be sought from LHDN.
9.	<p>Our Company has about 60 employees. Can we ask our employees to go for Unpaid leave till MCO ends and will they be eligible to claim financial support from Govt? If yes, what is the procedure?</p>	<ul style="list-style-type: none"> ▪ Employer must first obtain the consent from the employees to go on unpaid leave. If not, employees can treat it as a constructive dismissal event and may sue the employer. ▪ For employee under unpaid leave, the employee can get financial assistance from the Employment Retention Programme (ERP) subject to the following salient requirements among others: <ul style="list-style-type: none"> i) Employee with monthly salary of RM4000 and below ii) No pay leave (30 days minimum) for a period of 1 to 6 months ▪ Exact particulars and relevant forms can be obtained from the PERKESO's website: https://www.perkeso.gov.my/
10.	<p>As an organisation, what financial support are we entitled to get from the Govt and what is the procedure of claiming the same?</p>	<ul style="list-style-type: none"> ▪ Company can opt for Wage Subsidy Program (WSP) for maximum period of 3 months. This program is subject to requirements whereby company is not allowed to retrench worker, ask worker to go for unpaid leave or pay cuts for at least 6 months (3 months during subsidy period, 3 months thereafter). Alternatively, can go for grants provided by banks or government, such as special relief grants and BSN Micro Relief Scheme. For more details, please refer to their website.

11.	What is the difference between Employment Retention Program (ERP) and Wage Subsidy Program (WSP)?	<ul style="list-style-type: none"> ▪ ERP – Employees are on unpaid leave and employer is not paying salary. ▪ WSP – The employees are still working and employer still paying their salary. But government will subsidize the salary. ▪ Employer can only choose either one program. ▪ If the employer wants to close one outlet, they apply for ERP provided the employees consented to the unpaid leave.
12.	For the wages subsidy, are we allow to negotiate salary and still be eligible for subsidy?	<ul style="list-style-type: none"> ▪ During WSP period, employer is not allowed to cut salary. ▪ What if the employee voluntarily or consented for the pay cut? - So far there is no express direction from PERKESO on this situation yet. ▪ It's not advisable to adjust the salary at this moment until and unless there is a clear direction from PERKESO.
13.	If while on wages subsidy, if staff resigns on 4 th month. We have to give back the money?	<ul style="list-style-type: none"> ▪ For WSP, if the employee resigned, there is no need to refund the money. ▪ But employer need to update PERKESO on the latest status of the employee.
14.	Can we hold the landlord rental (with the letter provide to landlord) until landlord revert to us then only release Apr rental? And in this situation what is the advisable timeline we can hold?	<ul style="list-style-type: none"> ▪ Unless the landlord agrees to such request or unless there is a provision in the tenancy agreement that allows a tenant to withhold the rental pending negotiation/confirmation on certain issues from the landlord, a tenant cannot withhold the rental and by doing so, the tenant is in breach of the tenancy agreement. ▪ A tenant should continue to pay rental unless otherwise directed by the landlord.
15.	The subsidy are for those with the salary RM4000 and below. what can we do for those who has salary above RM4000? we do salary reduction, get them to clear annual leave or unpaid leave? what if they refused to take unpaid leave?	<ul style="list-style-type: none"> ▪ You need to negotiate with the employee based on their employment contract. Any salary reduction, clearance of annual leave or go on unpaid leave will generally need the employee's consent unless stated otherwise in the contract. If refused then you may have to look into retrenchment.
16.	Company want to apply WSP, which month payroll data shall we use? March?	<ul style="list-style-type: none"> ▪ If apply now, it will be the current payroll date which is March.

18.	Is it legal to terminate staff under probation with 7 days notice?	<ul style="list-style-type: none"> ▪ The same law is applicable for probation and permanent staff. Normally it will be stated in the contract. In the absence, the court may look into the employment contract of your permanent staff as a guide and may accord the same length of notice to the probation staff.
19.	Under WSP, as we update the staffs listing to Perkeso, can we replace those that had resigned on their own basis? aka to keep the listing at 200...	<ul style="list-style-type: none"> ▪ Yes, you can.
20.	In order to entitled to apply for WSP, pls clarify that the SME with less than 75 staffs no need to prove the 50% sales drops	<ul style="list-style-type: none"> ▪ Yes, for those companies with less than 75 staffs, these is no such requirement.
21.	<p>if consent from Both Parties are the bottom line and with confirmed or probationary employees' signature on agreement, is that means Employer could just have own new policies (pay cut, retrenchment, unpaid leave) for above RM 4000 and below RM 4000 employees, and without extra benefits (retrenchment benefits) provided.</p> <p>and, therefore, employer is not against any MCO laws is it correct?</p>	<ul style="list-style-type: none"> ▪ It is good to obtain consent from employee for pay cut, lay off or to go on unpaid leave. ▪ For workers earning RM2000 above, parties are free to negotiate the terms of employment. ▪ For workers earning below RM2000, the employer has legal obligation to pay the statutory retrenchment benefits under the Employment Act 1955 and Employment (Termination & Lay Off Benefits) Regulations 1980.