

Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:

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Latest news on law,
tax and business in ASEAN

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Read in this issue:

→ Note from the editor

→ Indonesia

- Update of Indonesian Financial Accounting Standards (“PSAK)
- Current Support for Investment Activities amid the COVID-19-Crisis in Indonesia
- Tax incentives in response to COVID-19

→ Malaysia

- 2nd and 3rd Economic Stimulus Package
- International Tax Matters due to COVID-19 travel restrictions
- Capital Allowance on Software
- Service Tax Exemption for Intragroup Services

→ Myanmar

- COVID-19 Economic Relief Plan
- Re-opening of offices
- MOEE tender invitation for solar power plant project

→ Philippines

- Covid-19 update
- Overview extensions

→ Singapore

- Compliance with the Personal Data Protection Act in the midst of the COVID-19 outbreak

→ Thailand

- COVID-19
- Board of Investment
- Electronic meetings of shareholders and directors

→ Vietnam

- Liability of legal representative and managers in the company

→ Note from the editor

Dear reader

Welcome to the Q2/2020 edition of our ASEAN Newsflash. This quarter is still dominated by news about turmoil resulting from the global pandemic situation.

Rödl & Partner continues to closely monitor all the news and governmental announcements related to the novel corona virus outbreak, and we are keeping track of measures which may enable businesses to mitigate the adverse implications. Besides some actual information on this topic in this Newsflash issue, you may want to refer to our [homepage](#) where we offer an overview of relevant regulations and developments in many jurisdictions worldwide. We are happy about all the interesting and fruitful discussions that we had with many of you during the last weeks. Despite the understandable concerns, we have seen a lot of creativity from our clients in navigating businesses through the current situation, adjusting operations and keeping staff safe from the virus.

We hope that our webinars of the last weeks (and upcoming) may provide some practical guidance under various legal and tax aspects, as well as help to stay connected in times of physical distancing. In case you missed the sessions, you may find a selection of recordings on our [homepage](#) as well.

Looking ahead we hope that infection rates will further decline, allowing the current trend in easing the lockdown measures in the EU as well as in ASEAN to continue and spur further business ramp-up.

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→ Indonesia

Update of Indonesian Financial Accounting Standards (“PSAK”)

The global pandemic of COVID-19 has created an unprecedented situation, not least for the financial accounting discipline in Indonesia. Amidst the current downturn of the national economy, financial reporting is a key tool to provide a realistic snapshot of the particular ability of individual business entities to deal with the current micro- and macroeconomic developments. Unfortunately not all German SMEs in Indonesia proved themselves prepared to master this challenge, due to either the absence of a financial auditing requirement by the headquarters, or because of no proper financial accounting standard being applied at the subsidiary.

Nowadays, Indonesia’s Financial Accounting Standards do comply with IFRS, though it does not exactly mirror the IAS board, while rather adjusting selected parts of the regulations to the specific local environment, especially with regard to the applied timeframes.

The Institute of Indonesian Chartered Accountants (“IAI”) issued a press release with a special emphasis on the Indonesian Financial Accounting Standards (“PSAK”) No. 8 and No. 71 referring to the events after the reporting date and the available financial instruments, respectively. The Board of IAI refers to the uncertainty of the global economic conditions due to the outbreak of the corona virus (COVID-19), including the duration of the pandemic and its potential impact, among others as follows:

PSAK 8 - EVENTS AFTER THE REPORTING DATE

PSAK 8, paragraph 3, stipulates that there are adjusting events and non-adjusting events; with adjusting events being supported by evidence and having an impact on the conditions at the reporting date, while non-adjusting events indicate conditions that occurred after the reporting date.

In March 2020, the World Health Organization (“WHO”) declared the outbreak of corona virus (“COVID-19”) to be a global pandemic emergency. Considering the timeline, the Board of IAI takes into account the outbreak of COVID-19 as a non-adjusting event for all financial reporting as of 31 December 2019, and no further adjustment is needed.

However, PSAK 8, paragraph 14, stipulates that an entity is required to re-assess the going-concern assumption taken as a basis upon preparing the financial statements, if the entity believes that significant events having occurred after the reporting date might have a potential impact to the going-concern value of the entity.

PSAK 71 - FINANCIAL INSTRUMENTS EFFECTIVE 1 JANUARY 2020

Pursuant to the press release, the Board of IAI announced that the effect of COVID-19 on the measurement of the Expected Credit Loss (ECL) as effective since 1 January 2020, might be taken into consideration. PSAK 71 set out a framework to determine the amount of Expected Credit Losses (ECL) to be recognized. The measurement of ECL shall be reflected by reasonable and supportable information, without undue cost or efforts, about the past event, current conditions and a forecast of the expected economic conditions.

PSAK 71 - EXPECTED CREDIT LOSS (ECL)

The entity shall review the methodology or ECL model previously used to determine the ECL in light of the current conditions. During the assessment of future economic conditions, the entity shall take into account the uncertainty related to the COVID-19 pandemic and government policies issued in Indonesia.

The assumed changes in economic conditions shall be reflected in the macroeconomic scenarios applied by the entities and in their weighting. If the effects of COVID-19 cannot be reflected in models or post-model overlays, adjustments will need to be considered. The environment is subject to rapid changes and updated facts; circumstances should continue to be monitored as new information becomes available.

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→ Indonesia

Current Support for Investment Activities amid the COVID-19-Crisis in Indonesia

The unfolding COVID-19 pandemic appears to obstruct the government's plan to boost investment, which includes the progress concerning two comprehensive **OMNIBUS LAWS** (see our [Q1 EDITION](#) for more). Notably, the government and the House of Representatives have decided in late April to delay the debate over labor issues within the omnibus bill on job creation. This decision was made in consideration of announcements of labor unions and other interest groups to hold mass street protests despite the pandemic outbreak.

While Indonesia's total investment realization slightly increased in the first quarter of 2020, the global economic turmoil caused by the pandemic is expected to reverse this trend with regard to the rest of the year. In 2019, Indonesia attracted about IDR 809 trillion of investment, slightly more than targeted. In the light of the current situation, the chairman of the Indonesian Investment Coordinating Board (BKPM), Bahlil Lahadalia, emphasized that the BKPM maintains the commitment to facilitate investor needs and ensure that investment continues to flow and supports the nation's economy. So far the authority has not yet reported any investment withdrawals, but first project delays are seen as some investors currently take a wait-and-see stance. Anyway, the development of the pandemic has slowed or even hindered the process of trade negotiations with several partner countries, particularly the Indonesia-European Union Comprehensive Economic Partnership Agreement, resulting in a delay of the tenth negotiation round which was scheduled for March.

Specific legislative development can so far be seen with regard to a facilitation of Business Licensing for the Medical Device and Pharmaceutical Industries. In order to spur the

containment of the coronavirus in Indonesia, the BKPM issued Decree Number 86 / 2020 on Providing of Ease of Business Licensing for Certain Business Fields Related to Handling of the COVID-19 Outbreak (Decree 86/2020). As such "certain business fields" the medical device industry and the pharmaceutical industry have been identified. Therefore, these industries are granted promotion in form of (i) reduction and/or facilitation of business licensing requirements, (ii) acceleration of the administrative business licensing process and (iii) further special support services. Decree 86/2020 entered into force on 1 April 2020 and will remain in effect until the pandemic emergency response status is declared to be over. Such declaration will require a respective Decree of the National Disaster Management Agency.

It should be noted that response of the Indonesian government to the outbreak is evolving rapidly. Investors should therefore regularly check for updates.

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→ Indonesia

Tax incentives in response to COVID-19

In response to the current COVID-19 pandemic, the Government has issued recent tax regulations, i.e. Minister of Finance Regulation Number PMK-44/2020 of 27 April 2020 and its implementing guidance, i.e. DGT Circular Number SE-29/2020 of 30 April 2020.

THE INCENTIVES COVER:

1. Article 21 Employee income tax borne by the government, for employees who have an annual gross income of less than IDR 200 million;

2. 30 percent reduction of Article 25 monthly income tax instalment;
3. Exemption of Article 22 income tax on imports;
4. Accelerated VAT refund process by way of preliminary VAT refund for taxpayers asking for VAT refund of less than IDR 5 billion;
5. Final tax of 0.5 percent borne by the government for Small & Medium Enterprises. The Small & Medium Enterprise is a taxpayer having an annual gross turnover of less than IDR 4.8 billion.

The above incentives are available for tax periods of April until September 2020 for the eligible taxpayers who:

- have an industry Business Classification (“KLU”/Klasifikasi Lapangan Usaha) that is mentioned in a list given in the Attachments of PMK-44/2020; or
- are classified as an export-oriented company provided with Import Facility (“KITE”/Kemudahan Impor Tujuan Ekspor); or
- are classified as an entrepreneur operating in a Bonded Zone

In order to check the incentive eligibility, taxpayers should refer to industry business classification (KLU) as listed in PMK-44/2020.

In order to utilize the incentives, eligible taxpayers should:

- submit notification on the utilization of Article 21 Employee Income Tax incentive or Article 25 incentive through www.pajak.go.id by using a form that is attached to PMK-44/2020;
- submit application of Article 22 Tax Exemption

through www.pajak.go.id by using a form that is attached to PMK-44/2020;

- submit application of Final Income Tax incentive through www.pajak.go.id by using a form that is attached to PMK-44/2020.

REPORT/DECLARATION REQUIRED:

- Those eligible taxpayers must prepare a monthly realization report on final tax borne by the Government and Employee income tax incentive to be submitted by the 20th of the following month by using a form as attached to PMK-44/2020;
- A three-months realization report (covering Apr-Jun 2020 and Jul-Sep 2020 periods) must be filed by taxpayers utilizing Article 22 exemption and Article 25 reduction by using a form as attached to PMK-44/2020.

Please kindly connect with us for detailed guidelines.

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→ Malaysia

2nd and 3rd Economic Stimulus Package

The 2nd and 3rd Economic Stimulus Package (“ESP”) valued at MYR 250 billion and MYR 10 billion respectively, have been announced on 27 March and 6 April 2020 to further address the impact of the COVID-19 outbreak on businesses and affected individuals.

SUPPORTING BUSINESSES

- Deferment of monthly tax instalment payments for Small and Medium Enterprises (“SME”) for 3

months commencing April 2020. Previously limited to tourism industry in the 1st ESP;

- Wage subsidy of MYR 600 – MYR 1,200 per month for a period of 3 months for employees (maximum 200 employees per employer) with a monthly salary below MYR 4,000 each, provided that the employer has been suffering a 50 percent drop in revenue since 1 January 2020;
- Subsidy of salaries payable during the MCO period for contractors involved in the service

sector such as cleaning and food suppliers in schools, public higher learning institutions and other government agencies;

- Allow employers to opt for deferment, restructuring or rescheduling of employer's contribution to the Employees Provident Fund ("EPF");
- Waiver of Human Resource Development Fund ("HRDF") contribution for 6 months for all sectors from 1 April 2020;
- All banks are required to provide financial relief in the form of payment moratorium comprising restructuring and rescheduling of loans for affected businesses and individuals;
- A reduction of 25 percent levy on foreign workers to all companies with work permits that will expire in the period of 1 April 2020 to 31 December 2020;
- Waiver or discount for rentals will be given to SMEs in the retail sector which are operating on premises owned by Government Linked Companies ("GLCs"); and
- Additional tax deduction equivalent to the amount of rental reduction for the months of April to June 2020 granted to owners of buildings or business spaces that provide rental reduction of at least 30 percent waiver to SME

tenants. This deduction can be claimed in the tax return of the landlords with no prior approval required.

PRESERVING THE WELFARE OF MALAYSIANS

- Cash payout in April and May 2020 to the low (B40) and medium (M40) class income groups;
- Monthly allowance to healthcare front liners, military, police, customs, and civil defense members directly involved in enforcing the Movement Control Order ("MCO") from 1 April 2020 until the end of the outbreak;
- Tax exemption on pre-retirement withdrawals from Account B under the Private Retirement Scheme ("PRS") during the period of April 2020 to December 2020, capped at MYR 1,500 per member;
- Electricity bill discounts ranging from 15 percent to 50 percent for all sectors for a period of 6 months;
- Insurance and takaful companies will bear COVID-19 screening costs of up to MYR 300 per policyholder.

→ Malaysia

International Tax Matters due to COVID-19 travel restrictions

The IRB issued a set of Frequently Asked Questions ("FAQ") to provide clarification on residence status, permanent establishment ("PE") issues and cross border employment income issues arising from the travel restrictions imposed by governments.

The key points raised in the FAQ are as follows:

- In determining the residence status of an individual, the period of temporary absence of a resident individual from Malaysia due to COVID-19 travel restrictions will be taken into account as part of the individual's period or periods in Malaysia. Accordingly, if a non-resident individual is temporarily present in Malaysia due to the same reason, the aforesaid period in Malaysia will not be taken into account for the purpose of determining the tax residence of that individual;

- A company will be deemed to be tax resident even though its board of directors' ("BOD") meeting is not held in Malaysia, subject to certain conditions;
- The temporary presence of a non-resident company's employees in Malaysia will not give rise to a PE in Malaysia if the company did not have a PE in Malaysia before the imposition of travel restrictions; there is no change to the economic circumstances in the company; and the temporary presence and employment activities performed by the employee in Malaysia are solely due to travel restrictions.

→ Malaysia

Capital Allowance on Software

Under Malaysian tax rules computer software purchased together with computer equipment from a supplier or purchased separately from a software supplier qualifies as an asset eligible for capital allowances. However, payment for developing software (e.g. consulting fees, right to use the software such as license fee and other incidental charges) do not qualify as “plant” and hence no eligible for capital allowance.

In the 2019 High Court case of Director General of Inland Revenue vs CIMB Bank Berhad, the Inland Revenue Board (“IRB”) was of the opinion that clients’ databases did not play any function by themselves and were not a tool in the Bank’s business. The High Court’s decision was in favor of the taxpayer where it was held that the capital expenditure incurred in the acquisition of core deposit and credit card, customers’ databases qualified for capital allowance claims as the Bank had used the databases as a tool or an apparatus in its banking business to provide more banking products to more customers from the databases.

Subsequent to this, the Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 209 were gazetted on 27 September 2019, to allow capital allowance claims on the expenditure incurred on consultation fee, payment for rights of software ownership and incidental fee relating to the development of customized computer software, with effect from YA 2018. Such expenses qualify for an initial allowance of 20 percent and an annual allowance of 20 percent.

Given that these Rules are effective from the year of assessment (“YA”) 2018, there remains ambiguity in the treatment for prior years of assessment. To clear this up, the IRB has issued Practice Note No. 2/2020 clarifying that software cost incurred before YA 2018 would not qualify for capital allowance. In addition, if the software expenses are paid to non-residents, it would fall within the scope of royalty or services that are subject to withholding tax.

→ Malaysia

Service Tax Exemption for Intragroup Services

The Royal Malaysian Customs Department (“RMCD”) has issued Service Tax (Amendment) Regulations 2020 and Service Tax (Digital Services) (Amendment) Regulations 2020, providing intragroup relief on digital services provided to a company within the same group of companies effective from 14 May 2020. This also applies to digital services provided by a company within the same group of companies outside Malaysia, i.e. imported services.

In addition, if the digital services are also provided to any person outside the same group of companies, digital services provided to both, intragroup and third parties, would be subject to service tax. With effect from 1 January 2020 however, intragroup services would be exempt from service tax if the total value of taxable services to third party in that month and the 11 months immediately succeeding that month does not exceed 5 percent of the total value of taxable

services to both, intragroup and third parties. Taxable services provided to third parties would still be subject to service tax irrespective of the 5 percent threshold.

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→ Myanmar

COVID-19 Economic Relief Plan

On April 27 2020, the government published a comprehensive plan on how to overcome the impacts of the Corona pandemic. This 15-page plan focuses on 7 goals and therefore covers a broad range of government measures to improve the macroeconomic environment and to ease the impact of the crisis on the private and business sector, banks and insurers, as well as on laborers and workers. In addition to more traditional measures, the government also aims at promoting innovative products and platforms, such as e-payment and online-shopping solutions. The plan is of course also focusing on strengthening and improving the healthcare system and lays out strategies to increase access to COVID-19 response financing.

As an immediate support, the maximum interest rate for collateral loans have been lowered from 13 percent to 10 percent, and for unsecured loans from 16 percent to 14,5 percent. On a regional comparison, the new rates are still on a high level but for companies seeking financing in a country with limited access to financing, this measure still represents an ease of burden.

Further, the budget department from the Ministry of Planning, Finance and Industry (MoPFI) immediately provided a 100 billion MMK fund (approximately 71,5 million USD) for local companies in the most affected tourism and CMP (cut-make-pack) sector to apply for a 1 percent working capital loan. This fund is planned to be further increased until the end of this year to 200 – 500 billion MMK (143– 357,5 million USD).

Local companies which are not benefitting from this low-interest fund may receive a 50 percent government guarantee for any new loan and upon conditions to maintain or rehire staff.

Though most measures are aimed at supporting local companies, foreign companies are considered in the relief plan as well.

All companies, local and foreign, are technically entitled to a 10 percent non-refundable tax credit on the incremental wage bill and on incremental investments on capital equipment. Companies will benefit from a Personal Income Tax deduction of 125 percent of paid wages, while

further details on the implementation are yet to be announced.

For exporting businesses, the Withholding Tax of 2 percent on exports has been waived, same as the annual fees charged by the Ministry of Hotel and Tourism.

Interesting for companies in the medical supply field is also the waiving of the Specific Goods Tax, custom duties and Commercial Tax for critical medical supplies and products related to the prevention, control and treatment of COVID-19.

In order to promote investment, fast-track procedures to approve and disclose large private pipeline projects by reputable international companies are aimed to be implemented immediately.

Also investments into renewable energy projects might be eased under this relief plan and in this special pandemic situation to attract more foreign direct investment. The same is true for investments listed in the project bank (<https://projectbank.gov.mm/en/>) with a focus on healthcare, key economic infrastructure and other strategic projects.

Though clear regulations on how measures will be implemented, how companies can apply for assistance from the relief plan or how to benefit from the several tax reliefs remain to be specified, the COVID-19 Economic Relief Plan is a necessary first step to ease the impact of the global pandemic in Myanmar.

In contrast to most other countries, Myanmar's growth outlook in 2020 is still believed to be positive with 1,8 percent (IMF). Compared to the initial forecast of 6,4 percent, this would be the lowest growth rate in Myanmar since the opening of the country in 2011. For further information on the economic relief plan of the government, please see:

<https://www.mol.gov.mm/mm/wp-content/uploads/2020/04/COVID-19-Version-3.0-20-4-2020.pdf>.

Please also do not hesitate to contact us for any further questions.

→ Myanmar

Re-opening of offices

Similar to regulations for factories and workshops, companies have to apply upfront at the respective labor office for re-opening their office. After the application, an inspection team will be sent to the office to assess whether COVID-19 work space safety regulations have been implemented properly, and to eventually advise on further measures to be taken.

So far and until 31 May, groups of more than 4 people are not allowed, and several townships in Yangon as well as other bigger cities

in the country are still under lock-down. International flights are suspended as well until 31 May, until further notice.

For detailed information on work space safety regulations (<https://www.roedl.com/de/de/themen/documents/myanmar-unofficial-translation-covid-19-guide-prevention.pdf>) as well as applications for re-opening offices, please do not hesitate to contact us.

→ Myanmar

MOEE tender invitation for solar power plant project

As part of an investment initiative to counter the impact of COVID-19 as well as to respond to the notorious electrical energy shortage in the country, the Ministry of Electricity and Energy (MOEE) invites local and foreign investors to participate in a tender for a solar power plant project.

Based on a 20-year build-operate-own system, investors are invited to submit the tender application by latest 18 June 2020 for an independent 1,000 megawatt solar power plant which could also be realized with more than one plant.

Last year, the first step of a solar power plant with currently 40 megawatt in the Magwe region has started to operate and is aimed to be

enlarged to 170 megawatt which would be sufficient for approximately 210,000 households.

Myanmar is currently producing most of its electricity from hydropower but is making efforts to further diversify the energy production.

Further information from MOEE: https://www.moee.gov.mm/mm/userfile/EPGE_Tender_for_implementation_of_Ground_Mounted_Solar_Power_Plant.pdf

Please also do not hesitate to contact us for further information on this tender.

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→ Philippines

Covid-19 update

On 16 March 2020, the Philippine government declared an *Enhanced Community Quarantine (ECQ)* for the island of Luzon and Metro Manila, which was later extended with various modifications from 15 and 30 April until 14 May.

As of 13 May 2020, the COVID-19 cases confirmed by the Philippine Department of Health have reached a total 11,618 of which 772 persons died. Most of the cases are recorded within Metro Manila and Cebu City. This prompted the government to modify its quarantine measures based on risk levels to transition from a partially hard “lockdown” to gradually opening the economy and social community towards the New Normal. Unless specific incidences justify particular measures, the following clarifications apply until 31 May 2020:

- The Province of Laguna, all Highly Urbanized Cities of the National Capital Region, the Municipality of Pateros and Cebu City are placed under a *Modified Enhanced Community Quarantine (MECQ)*;
- Provinces and cities falling under a moderate risk assessment are placed under a *General Community Quarantine (GCQ)* until 31 May 2020;
- Provinces and cities which are classified at a low risk level are no longer under community quarantine, but still need to observe general social distancing measures and strict health standards.

With regards to the consequences for each category, the COVID-19 Inter Agency Task Force published the following presentation:

	Phase 1: ECQ	Phase 2: Modified ECQ	Phase 3 : GCQ
 Population	100% stay at home	100% stay at home	Vulnerable (e.g., elderly) Transmitters (e.g., youth)
 Exercise	Not allowed	Limited outdoor exercise allowed (e.g., outdoor walk, jog/run, bike) with safety protocols (i.e., masks and 2m distancing)	Limited contact sports (e.g., golf, tennis)
 Gathering (e.g., religious)	Not allowed	Highly restricted (5 maximum)	Restricted (e.g., max 10)
 Travel	No public transport Flights: no domestic, limited international	No public transport Flights: no domestic, limited international Controlled inbound travel (OFWs/returning filipinos) Biking and non-motorized transport encouraged	Public transport with strict safe distancing Inter-island (GCQ to GCQ), with safety protocols
 Schools	School premises closed	No inter-island travel School premises closed	Skeletal workforce to process requirements from students, and to prepare for graduation and for next semester
 Government	Skeletal onsite Others work from home	Skeletal onsite Others work from home	Alternative work arrangements (e.g., 40 hours, 4-day work week)

Detailed information on the classification of specific areas and its consequences may be found on the website for the COVID-19 Inter Agency Task Force at <https://www.doh.gov.ph/COVID-19/IATF-Resolutions>

Overview extensions

To soften the hardship for many companies and individuals during the Enhanced Community Quarantine and/or due to the limited operations and mobility, the Philippine government authorities have issued numerous guidelines, circulars and advisories to respond to COVID-19 and to postpone filing and payment dates for taxes and similar matters.

In many cases the respective actions required are delayed by respectively fifteen (15) or thirty (30) days from the official end date of the quarantine measures. With regard to the interpretation of certain issuances in the light of the recently announced modified quarantine measures, as highlighted above, additional issuances and clarifications may be expected in the near future.

Below we provide a general overview of such issuances that might be of interest and relevance to you:

- *BIR Revenue Regulations 7, 10 & 11 of 2020* extend the statutory deadlines for any tax related assessment, submission or payment. Furthermore, tax returns filed prior to the deadline may still be amended until the expiration of the extended period without the imposition of corresponding penalties (surcharge, interest and compromise penalties). Overpayment of taxes may generally be credited against the same tax in the succeeding period. Note: Despite the above, in some cases the automated electronic filing and payment system may calculate penalties. BIR Advisory dated 30 March 2020 clarifies when these penalties may be disregarded. A detailed list of the extended due dates can be found in RR 11-2020.
- *BIR Revenue Regulations 11 of 2020*. The general deadline to file the annual income tax return 2019 for all taxpayers is postponed from 15 April 2020 to 14 June 2020.
- *SEC Memorandum Circular 5 of 2020*. Companies which due to COVID-19 government measures were affected in the timely preparation and/or completion of the statutory audit may under certain conditions file their audited financial statements 2019 until 30 June.
- *BIR Revenue Memorandum Circular 34 of 2020* suspends the running of the statute of limitations for BIR to issue deficient tax assessments and collection notices.
- *SEC Memorandum Circular 9 of 2020*. The Securities and Exchange Commission issued Guidelines on the filing and deadlines for the General information Sheet. In principle, an electronic version shall be submitted by mail and the hard copy must be submitted after lifting of the quarantine measures.
- *DTI Memorandum Circular 4 of 2020*. The Department of Trade and Industry clarified that, although there may be specific contractual provisions or legal remedies, under its guidelines mutual beneficial agreements between landlord and tenant are encouraged (e.g. rent reduction) and that there shall be a grace period of 30-days on rent payments, unless the specific provision for leisure and entertainment facilities as well as retail stores apply. Note: Despite the grace period some of our clients were able to come to an agreement with their landlord regarding a reduction of rent.
- *SC Administrative Circulars*. The Supreme Court of the Philippines released various circulars regarding the physical closure of courts, suspension of hearings and extensions of filing periods. Offices concerned with the handling of time-critical matter, such as certain criminal matters remain open on a skeleton workforce and partially based on specific regulations (e.g. electronic filings, videoconferencing).
- *DOLE Department Order 213 of 2020*. Similar to the circulars of the SC also various labor matters | inspections | employment dispute related proceeding and actions were suspended or filing periods extended.
- *DOLE Labor Advisory 16 of 2020 | Bureau of Immigration Advisory 19 March 2020*. Suspends various work permits | visa applications or extends their renewal periods.

- *PhilHealth Circular 27 of 2020*. The social security agency released a moratorium on contribution payments. All premium payments for the applicable months were extended until 31st May, 2020 without interest for all qualifying contributors.
- *Pag-ibig Fund 432 & 433*. The agency issued guidelines to provide a minimum of thirty (30)-days grace period on all qualifying loans falling due within the period of enhanced community quarantine (without incurring interests, penalties, fees and other charges).
- *SSS Circular 4, 6 & 7 of 2020*. The Social Security System as well issued various Circulars to extend the deadline for the remittance of contributions until after the quarantine period, claims of SSS covered persons and a moratorium on short term loans re-payments.

The above summary does only give a fraction of the specific provisions issued in the past 10 weeks approximately. Please do not hesitate to contact us for any specific questions.

Furthermore, we do encourage our clients to consider, if the authority and/or the financial and operational situation of the company permits to conduct filings/payments and other actions as per usual. We estimate that a certain backlog or a flood of new applications, filings etc. may lead to its own challenges upon lifting of the ECQ, MECQ and GCQ

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→ Singapore

Compliance with the Personal Data Protection Act in the midst of the COVID-19 outbreak

The Personal Data Protection Commission (PDPC) recently issued an Advisory on the Collection of Personal Data for COVID-19 Contact Tracing (the **ADVISORY**).

The Advisory stipulates that relevant personal data may be collected, used and disclosed without consent for the purpose of carrying out contact tracing and other response measures.

Under the Personal Data Protection Act (PDPA), an organization must generally obtain the consent of an individual before collecting, using or disclosing his personal data – unless an exception applies.

In accordance with the Second, Third and Fourth Schedule of the PDPA, organizations may collect, use or disclose personal data about an individual without the consent of the individual, or from a source other than the individual where the *collection, use or*

disclosure is necessary to respond to an emergency that threatens the life, health or safety of the individual or another individual.

The outbreak of the coronavirus disease 2019 (COVID-19), which has been characterized as a pandemic by the World Health Organization, falls within the exception.

The PDPC has developed a notice to inform visitors that personal data will be collected during the outbreak of COVID-19 for contact tracing purposes. Such notice may be found on the PDPC's website.

As organizations may require NRIC/FIN/passport numbers to accurately identify individuals in the event of a COVID-19 case, organizations may collect visitors' NRIC, FIN or passport numbers where it is necessary for this purpose.

Despite the latest exception for the collection, use or disclosure of personal data, organizations still need to comply with their obligations under the PDPA.

Organizations must ensure that the personal data is not used for other purposes without consent or authorization under the PDPA. Organizations must make reasonable security arrangements to protect the personal data in their possession from unauthorized access or disclosure.

Further, once the personal data in the organization's possession or under its control no longer serves any legal or business purposes (i.e. contact tracing-related purpose), organizations will need to destroy or dispose of the personal data in an appropriate manner.

Do take note of the latest developments with the Singapore Government's introduction of a **SafeEntry** system – to log the check-in of employees and visitors – to be deployed by all businesses and services that are in operation at a list of facilities/places as of 12 May 2020. These facilities/places include **workplaces (e.g. offices, factories)**, schools and educational institutes, health facilities, hairdressers, supermarkets, malls, hotels, etc.)

SafeEntry is a national digital check-in system that logs the personal particulars of individuals (name, NRIC/FIN number and mobile number) which is only to be used for contact

tracing. The Government is the custodian of the personal data submitted by individuals, and the personal data is stored in the Government server. Only authorized public officers involved in contact tracing will have access to the personal data, when need arises. The data may also be de-identified and aggregated for analytics purposes. The personal data will be purged when it is no longer needed for contact tracing purposes.

To start using SafeEntry, organizations will need to register for an account using the COvPASS. To do so, please visit <https://www.safeentry.gov.sg/>.

In light of the continuously updated operational processes which ought to be implemented by organizations to ensure the fight against COVID-19, please do contact us to ensure that your organization does comply with the PDPA.

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→ Thailand

COVID-19

GENERAL SITUATION

The general situation has improved. Overall, Thailand currently has about 3,000 confirmed cases and 56 confirmed deaths. Over the last weeks, the new cases have been steadily decreasing.

The Emergency Decree remains in force, including the curfew from 10 pm to 4 am. Public gatherings remain banned. However, the government has indicated that they are considering easing restrictions by the end of May. As of 3 May 2020, certain businesses may re-open under the following conditions:

- Hotels, restaurants, food stalls are allowed to sell food and drinks. Pubs and bars may only sell

on a takeaway basis. Alcoholic beverages may be sold for takeaway only;

- Markets and retail stores are allowed to re-open, but have to comply with specific preventive measures such as enforcing the wearing of face masks, physical distancing, and providing opportunities for hand disinfection;
- Hairdressers and barbers are permitted to re-open for hair cutting and washing on an appointment basis only;
- Outdoor sports venues such as golf courses or tennis courts may re-open under the condition of not holding public events or competitions.

The business community keeps urging the government to relax the lockdown further and increase the relief measures to mitigate the effects

of the looming recession, fueled by the meltdown of the tourism industry and low exports. In April, the Business Center of the University of the Thai Chamber of Commerce recorded a significant change in the overall business confidence. The index dipped from 45.4 in January to 32.1 in April.

TRAVEL TO THAILAND

The government has extended the ban to foreigners entering Thailand as well as commercial flights arriving in Thailand until 31 May 2020. The previously issued exceptions continue to apply.

The government is considering imposing a tax for all foreigners entering Thailand of not exceeding THB 300. A feasibility study has been launched to assess the potential impacts and benefits of such a tax. Government sources claim that the tax could be implemented in the fourth quarter of 2020.

Overall, the tourism industry has developed a three-phase plan for re-opening.

During the lockdown exit phase, the tourism industry shall prepare for a re-opening, implementing measures to prevent the spread of COVID-19. Subsequently, during the selective opening phase, tourists from countries having the virus under control will be permitted to enter Thailand. The Tourism Authority estimates that about 50 to 60 percent of tourist attractions should be re-opened at this stage. In the last phase, extensive opening, Thailand will slowly return to pre-COVID-19 tourism and open up to global tourism. This phase could last for six months.

VISA RELIEF

The government has extended the visa relief measures to 31 July 2020:

- All visas have been automatically extended to 31 July 2020;
- The 90-day report requirement has been suspended until 31 July 2020.

→ Thailand

Board of Investment

The BOI has approved additional investment incentives to attract further investment. Concerning the medical sector, the BOI approved the following measures, mainly directed at investments in Thailand's medical sector:

- An additional 50 percent reduction for three years on corporate income tax in case the promoted project produces medical devices and parts thereof, non-woven fabrics used in the production of medical supplies, diagnostic test kits, drugs, and active pharmaceutical ingredients;
- Exemption on import duties on machinery to improve the production line to manufacture medical devices;

- Additional incentives for the production of raw materials used in the manufacture of medical products.

With regards to the management of water resources, the BOI has approved a tax exemption for up to three years (capped at 120 percent of the investment) for projects supporting the holistic management of water resources to mitigate flooding and prevention of droughts.

Additionally, the BOI has relaxed specific deadlines for the filing of applications, relaxed import duties on certain goods used in research and development in Thailand, eased conditions for local start-ups regarding Smart Farming.

→ Thailand

Electronic meetings of shareholders and directors

On 19 April 2020, the Royal Decree on Teleconferences through Electronic Means came into force, easing former restrictions on electronic meetings. The key issue of the former legislation was that electronic meetings were permitted only under the requirement that all attendees are physically in Thailand. The regulations were

impractical for international companies having shareholders in various destinations.

The new law abandoned this requirement, substantially simplifying the process. Therefore, companies may now hold shareholders and board of directors meetings electronically, with none of the attendees having to be physically

present in Thailand. An invitation may be sent by electronic means, and the organizer has to keep a copy of the invitation as evidence (electronic storage is sufficient). The following conditions apply to the meeting:

- Attendees of the meeting have to identify themselves electronically prior to joining the meeting. Thus, companies have to implement measures to allow for a safe and reliable identification;
- Attendees shall have the opportunity to cast their vote open or secretly. Thus, organizers have to implement a safe voting mechanism;
- The meeting has to produce minutes in writing;
- Additionally, the meeting has to be recorded (audio or audiovisual);
- Lastly, the organizer of the meeting has to record the electronic traffic data of the attendees.

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→ Vietnam

Liability of legal representative and managers in the company

Legal representative and managers are key figures when it comes to successfully and smoothly running a business. They have the power to take vital decisions having a major impact on the development of a company. Therefore, many foreign investors are concerned about the responsibility, the liability assigned to these top positions - ahead of the owners and the shareholders of the company -, fearing they might commit any breach of obligation.

In this newsletter, we will present the main liability of the legal representative as well as of the management positions in limited liability companies and joint stock companies in accordance with the Law on Enterprises No. 68/2014/QH13 dated 26 November 2014 ("**Law on Enterprises**"), and the draft Law on Enterprises 2020, dated 10 March 2020, expected to be passed by the National Assembly of Vietnam in May ("**Draft Law on Enterprises**"), the Civil Code No. 91/2015/QH13 dated 24 November 2015 ("**Civil Code**") and the Criminal Code No. 100/2015/QH13 dated 27 November 2015 ("**Criminal Code**").

LIABILITY OF LEGAL REPRESENTATIVE

1. DEFINITION OF LEGAL REPRESENTATIVE:

Currently, the Law on Enterprises defines that legal representative of an enterprise means an individual representing the enterprise in exercising the rights and performing the obligations arising from transactions of the enterprise, and representing the enterprise upon acting as plaintiff, defendant or person with related interests and obligations in arbitration or court proceedings, as well as exercising further rights and performing further obligations in accordance with the law. This definition remains unchanged under the Draft Law on Enterprises.

In practice, the legal representative usually holds a vital position such as Director or General Director, Chairman of Members' Council or President, etc.

2. LIABILITY OF LEGAL REPRESENTATIVE IN THE COMPANY

Generally, the legal representative of an enterprise has the following responsibilities:

- a) To exercise the delegated rights and perform the delegated obligations honestly and prudently, and to his or her best ability in order to assure the lawful interests of the enterprise;
- b) To be loyal to the interests of the enterprise; not to use information, know-how or business opportunities of the enterprise; not to abuse his or her position and power, and not to use assets of the enterprise for his or her personal benefit or that of other organizations or individuals;
- c) To notify the enterprise in a timely, complete and accurate manner that he or she and a person related to him or her is the owner or holds controlling shares or shares of capital contribution in other enterprises.

The legal representative must be personally liable for any loss and damage to the enterprise due to a breach of the obligations mentioned above.

We understand that in case the company has many legal representatives, only the person who commits the breach of obligation will be held liable for that breach. Nonetheless, according to the Draft Law on Enterprises, if the company has more than one legal representative and the company's charter does not specify the division of rights and obligations of the legal representatives, all legal representatives are to be held jointly liable for damages to the company due to a violation of their rights, obligations and responsibilities.

This is a remarkable new addition, because it rises the responsibility of all legal representatives, and it also urges the company's owner to divide the competence between the legal representatives.

LIABILITY OF MANAGERS

1. DEFINITION OF MANAGERS

In limited liability companies and joint stock company, the Law on Enterprises provides regulations for those in charge of the management of an enterprise, comprising the Chairman of a Members' Council, member of a Members' Council, the President of a company, the Chairman of a Board of Management, a member of a Board of Management, a director or general director, and an individual holding another managerial position, who is authorized to enter into transactions in the

name of the company as stipulated in the charter of the company. This definition remains unchanged under the Draft Law on Enterprises.

The Law on Enterprises also stated that a member of the Inspection Committee or inspector is considered a management position in the company while the Draft Law on Enterprises does not state this point anymore.

In general, the managers shall act within their scope of responsibility regulated in many documents such as laws, Charter, labor contract, internal policies of company and they will have to bear liability upon acting beyond their granted competence.

1. LIABILITY OF MANAGERS IN ONE MEMBER LIMITED LIABILITY COMPANY

The general liability of the Members' Council, the President of the company, the inspector are to take responsibility before the law and the company owner for the implementation of delegated rights and obligations in accordance with the Law on Enterprises and other provisions of relevant laws.

Nevertheless, the Draft Law on Enterprises does not require the one member limited liability company to have an inspector in the management structure anymore (except for a subsidiary of a state-owned enterprise). Therefore, the regulation on the liability of an inspector has been removed. The company, however, may decide to appoint or hire an inspector at their discretion.

The director or general director is responsible before the law and the Members' Council or the President of the company for the implementation of his or her rights and obligations.

In the event of a transaction that does not obtain the required approval as set forth by law (i.e. the transaction between the company and the director or related person of director), thereby causing loss and damage to the company, the signatories to the contract and related persons being the parties to the contract are to be held jointly responsible for any loss arising and for the forwarding to the company of any benefit gained from the performance of such contract or transaction.

We note that these top positions shall be liable for any breach of obligations, including omission, imprudence, negligence.

2. LIABILITY OF MANAGERS IN TWO OR MORE MEMBERS LIMITED LIABILITY COMPANY

The members of Members' Council shall bear personal liability when performing the following acts in the name of the company:

- a) Breach of the law;
- b) Conduct of business or other transactions not in the interests of the company and thereby causing loss to other persons;
- c) Premature payment of debts in cases where the company is likely to be in financial danger.

They must also take personal responsibility for (i) failing to contribute or failing to contribute in full the due amount of capital contribution; or (ii) distributing the profits or reduction of charter capital not in accordance with the laws; or (iii) not convening the meeting of Members' Council as stipulated by law (only applies to the Chairman of Members' Council).

The director or general director is responsible to the Members' Council for the exercise of his or her rights and the performance of his or her obligations.

In the event of a transaction that does not obtain the required approval as set forth by law (i.e. the transaction between the company and the director or related person of director), thereby causing loss and damage to the company, the signatories to the contract or transaction, the interested member and the related persons of such member must compensate any loss arising and return to the company any benefits gained from the performance of the contract or transaction.

In addition to the above, while the Law on Enterprises provides for the liability of the Inspection Committee to be governed by the Charter of the company, the Draft Law on Enterprises clearly stipulates that the inspectors shall have to bear personal liability or be held jointly liable for damages caused to the company in case of a breach of obligations.

We note that these top positions shall be liable for any breach of obligations, including omission, imprudence, negligence and any member of a company may, in their own name or in the name of the company, initiate a legal action regarding civil liability against them upon failing to comply with their responsibility.

3. LIABILITY OF MANAGERS IN JOINT STOCK COMPANY

Each member of the Board of Management, the director or general director and other managers have the following responsibilities:

- a) To exercise his or her delegated powers and to perform his or her delegated obligations strictly in accordance with the Law on Enterprises, other relevant laws, the Charter of

the company, and the resolutions of the General Meeting of Shareholders;

- b) To exercise his or her delegated powers and perform his or her delegated obligations honestly and prudently, to their best ability in order to assure the maximum legitimate interests of the company;
- c) To be loyal to the interests of the company and shareholders; not to use information, knowhow, business opportunities of the company, not to abuse his or her position and powers and not to use assets of the company for his or her own personal benefit or for the benefit of other organizations or individuals;
- d) To notify the company in a timely manner, and fully and accurately of enterprises in which he or she or his or her related persons own or have contributed capital or controlling shares.

The managers, depending on their specific positions, shall bear personal responsibility upon failing to comply with the obligations on (i) supervising and monitoring the payment of subscribed shares; or (ii) registration for change of charter capital based on the payment of subscribed shares and registration for any change to founding shareholders; (iii) ensuring the contents and form of a share certificate issued by the company; (iv) promptly and accurately providing information to the register of shareholders as requested by shareholders; (v) destroying share certificates as required by laws; (vi) the payment for redeemed shares or dividends; (vii) convening a meeting of the General Meeting of Shareholders, Meeting of Board of Management; (viii) passing resolution of Board of Management in compliance with the laws; (ix) performing the transaction with required approval.

As a result of committing a breach, a shareholder or a group of shareholders owning at least one per cent of the number of ordinary shares for six consecutive months has the right, on their own behalf or on behalf of the company, to initiate a legal action regarding civil liability against a member of the Board of Management or the director or general director who committed a breach of obligation as required by laws. We also note that the Draft Law on Enterprises now does not require the share holding period to start the legal process anymore.

The Draft Law on Enterprises also additionally stipulates that the managers in the company must bear personal liability or joint liability to

compensate for lost benefits and return the received benefits and compensate for all loss to the company and third party resulting from a breach of obligations.

CRIMINAL LIABILITY OF LEGAL REPRESENTATIVE AND MANAGERS

Depending on the seriousness and type of the committed breach, the legal representative, the managers could be subject to criminal liability in accordance with the Criminal Code of Vietnam. For instance, they may face up to 3 years' imprisonment for illegally dismissing the employees or a penalty of up to 7 years' imprisonment for evading payment of social insurance, health insurance, unemployment insurance for employees, etc. In addition, the person who commits the breach may also be prohibited from holding certain positions or doing certain works for 01 - 05 years.

We note that the criminal liability does not exclude the legal representative and managers

from other liabilities vis-a-vis the company owners and shareholders.

Rödl & Partner Vietnam accompanies and assists clients of all kinds in their business activities in Vietnam.

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