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QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:

Q3/2020

Latest news on law,
tax and business in ASEAN

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Dear reader

Welcome to the Q3/2020 edition of our ASEAN Newsflash.

This quarter has seen a vast range of developments with regard to the global pandemic situation; while some regions show signs of relaxation and spurred economic growth in some sectors, others are facing new waves and remain subject to governmental restrictions. We keep monitoring the news and governmental announcements in our jurisdictions, and have again prepared a range of articles on related topics for this Newsflash issue.

Notably, we see a positive trend in several countries with fiscal authorities granting tax and investment incentives to mitigate the economic impact on domestic as well as on foreign invested companies. Another positive impulse for EU investors comes from the entry-into-force of the EU-Vietnam Free Trade Agreement on 1 August. In this issue, we will take a look at the liberalization in the services sector which, despite its' significant practical impact, seems less known to many entrepreneurs than the facilitations for the trade in goods. If you are particularly interested in the customs related aspects of the FTA, you may find more information [here](#) on our website.

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→ Indonesia

Support Letter for Foreign Business Representatives and Experts visiting Indonesia

On 11 June 2020, the Indonesian Investment Coordinating Board (BKPM) issued Announcement No. 8/2020 concerning the Issuance of a Letter of Support for the Visit of Foreign Investment Limited Liability Company Representatives and/or Experts during COVID-19.

Accordingly, a foreign invested company (PT PMA) in Indonesia can submit an application to the BKPM if a visit from a representative or expert (who needs to be employed with a group entity) from abroad is planned. The BKPM will verify the application and then issue a Support Letter. Additionally, such Support Letter will be provided by BKPM to concerned authorities, such as the immigration department.

The application shall be addressed to the Head of BKPM, signed by the company's highest management level and include the contact person/person in charge of application documents (mobile number) as well as a letter stating the purpose of sending in the company representatives or expert during the COVID-19 pandemic. Furthermore, the letter needs to provide the details of the (i) implementation of investment activities (total investment, project location), (ii) Indonesian Manpower Utilisation Plan and (iii) data of the respective representatives or experts including the name,

passport number, nationality, position. An additional letter needs to confirm the willingness to meet the provisions of the Indonesian COVID-19 Health Protocol.

The BKPM Evaluation Team will then verify the application documents and contact the person in charge to return the application documents if they do not meet the above requirements. In case of approval, the Evaluation Team will process the preparation of the Support Letter in form of a hardcopy, which is signed by the BKPM Official in charge (i.e. Deputy for Investment Climate Development on behalf of the Head of BKPM).

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→ Indonesia

Guidelines for the implementation of a regulation concerning tax incentives for taxpayers affected by the Coronavirus

On 28 July 2020, the Directorate General of Taxes issued and enforced Circular No. SE-43/PJ/2020 ([Circular Letter 43](#)) as a guideline to implement the Minister of Finance (MOF) Regulation No. 86/PMK.03/2020 ([Regulation 86](#)). Taking into consideration that Regulation 86 has been issued on 16 July 2020, the notification to apply for the 21 Income Tax Incentive ([Incentive](#)) for the July 2020

tax period shall be submitted no later than 10 August 2020. As previously stipulated in Regulation 86, the notification shall be submitted online through the website www.pajak.go.id.

In the event that employers meeting the required criteria to be granted the Incentive already deducted the income tax from their employees' income in accordance with Article 21 of the Tax Law ([21 Income Tax](#)), they may submit revisions

for the 21 Income Tax Return. For any overpayments of 21 Income Tax due to the correction, the following measures may be taken:

1. compensation of overpayment in the next tax period, if there is payable 21 Income Tax not qualifying for the Incentive in the next tax period, to an amount at least equal to the overpayment; or
2. filing for overbooking of the overall value of overpayments if there is no payable 21 Income Tax not qualifying for the Incentive in the next tax period; or overbooking of the differences in cases where such payable 21 Income Tax is lower in value than the overpayment of the incentivized 21 Income Tax.

The deducted 21 Income Tax shall then be paid to the employees concerned.

REVOCATION OF COMPANY STATUS AND RESUBMISSION

In the event that the MOF Decrees establishing the status of companies as a Facility of Import for Export Purposes (KITE) receiver, Bonded Zone permits, and Bonded Zone Business permits are revoked, the Incentive shall only be applicable until the Tax Period at the time of such revocation.

In the event that an employer or taxpayer is notified in writing that they are not entitled to the Incentive in relation to the employer's status as a KITE company or being in possession of Bonded Zone permits, the employer may resubmit their notification to apply for the Incentive online through the website www.pajak.go.id and under the following conditions:

- a. having obtained the MOF Decree regarding the KITE status establishment; or

- b. having its business activities listed in the Business Classification Codes listed in Annex A of the Regulation 86.

The Incentive shall be effective from the Tax Period at the time of resubmission until the December 2020 Tax Period.

INCENTIVE REALIZATION REPORT

The employer and/or taxpayer shall obtain the required report form from www.pajak.go.id, before uploading a complete and correct realization report file including the billing code as stated in Regulation 86, no later than the 20th day of the month following the end of the tax period. Should the report not be submitted before the deadline, the system will notify the employer's and/or taxpayer's account representative to follow up on the report. Employers and/or taxpayers who already have the obligation to submit their Annual Income Tax Return as of 2018 shall refer to the Business Classification Code stated and reported in such 2018 Tax Return. Otherwise, employers and/or taxpayers who did not or were not yet obliged to submit Annual Income Tax Returns in 2018 shall refer to the Business Classification Codes listed in the tax administrative documents master file of the Head Office Taxpayer.

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→ Malaysia

Guidelines in determining a Place of Business (POB) under sections 12(3) and 12(4) of the Malaysian Income Tax Act (ITA)

The Inland Revenue Board (IRB) has issued guidelines to clarify on the application of POB under Sections 12(3) and 12(4) of the ITA. Key matters covered are:

- A physical POB is explained as a physical place (either owned or rented) that the non-resident has access to in order to carry out their business activities. The physical place

- also needs to be fixed, i.e. with a certain degree of permanency (duration test); and a specific geographical point (location test);
- A person is considered to have a POB from a building site, construction, installation, assembly and supervisory activity if they have carried on activities at the site or realized a project for a period or periods exceeding 5 months in aggregate in any 12 months period (5 months period);
 - A non-resident person (principal) may be deemed to have a POB in Malaysia if they have an agent carrying out the following activities in Malaysia on their behalf, provided that the agent is not of an independent status:
 - (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modifications;
 - (b) habitually maintains a stock of goods or merchandise in that POB from which such person delivers goods or merchandise; or
 - (c) regularly fills orders on his behalf.
 - A physical place maintained solely for the purpose of carrying preparatory or auxiliary activities may not constitute a POB. These include activities that:-
 - (a) are so remote from the actual realization of profits of the business that it is difficult to allocate any profit to the physical place in question;
 - (b) in themselves do not form an essential and significant part of the activity of that business as a whole;
 - (c) are not identical to the general purpose of the whole business; or
 - (d) are usually carried out during a relatively short period.

→ Malaysia

Short-term Economic Recovery Plan (PENJANA) – Tax measures

The PENJANA valued at MYR 35 billion has been announced on 5 June 2020 to support the economy through empowering people, propelling business and stimulating the economy. The key tax measures are:

EMPOWERING PEOPLE

- Extension of the wage subsidy program for an additional 3 months;
- Deduction/allowance on personal protective equipment expanded to include thermal scanners and COVID-19 testing;
- Tax exemption up to RM 5,000 given to employers for provision of mobile phones, laptops and tablets to employees,
- Personal tax relief of RM 3,000 for fees paid to child care center;
- Special personal income tax relief of up to RM 2,500 on the purchase of mobile phone, notebook and tablet given to resident individuals;

- Further tax deduction for employers who implement flexible working arrangement (FWA) or enhance their existing FWA.

PROPELLING BUSINESS AND STIMULATING ECONOMY

- 50 percent remission of penalties for late payment of sales and service tax due and payable from 1 July 2020 to 30 September 2020;
- Extension of the special deduction for rental discount given to SME tenants for another 3 months;
- Accelerated capital allowance of annual allowance rate of 40 percent for machinery and equipment including ICT equipment extended until 31 December 2021;
- Special deduction for renovation and refurbishment expenses up to RM 300,000 extended until 31 December 2021;

- Special reinvestment allowance for manufacturing and selected agriculture activity; RM 300 million and above in the manufacturing sector in Malaysia;
- Income tax rebate of up to RM 20,000 per year for the first three years of assessment for new SMEs;
- Investment tax allowance of 100 percent for 5 years for Malaysian companies which relocate their overseas manufacturing facility to Malaysia;
- Stamp duty exemption for M&A of SMEs executed between 1 July 2020 to 30 June 2021;
- Stamp duty exemptions relating to residential property;
- Extension of 6-months deferment of instalment payments for businesses in the tourism sector;
- Real property gains tax exemption for disposal of residential property during the period from 1 June 2020 to 31 December 2021;
- Extension of special personal income tax relief of up to RM 1,000 for domestic travelling expenses until 31 December 2021;
- 100 percent sales tax exemption on sale of locally assembled passenger motor vehicles and 50 percent sales tax exemption on imported passenger motor vehicles;
- Extension of service tax exemption until 30 June 2021 for hotel and other accommodation operators;
- 100 percent export duty exemption on palm oil related products.
- Full exemption of tourism tax;
- Zero tax rate between 10 years to 15 years for foreign companies which make new investments of

→ Malaysia

Special Tax Treatment of Interest Income for Banks and Financial Institutions

On 25 August 2020, the Malaysian government gazetted the special tax treatment of interest income derived by licensed banks and financial institutions from qualified customers during the loan moratorium period from 1 April 2020 to 30 September 2020 in the Income Tax (Special Treatment for Interest on Loan) Regulations 2020.

The regulations state that where a moratorium is approved by a bank or financial institution in respect of any amount of interest on a loan

which is due and payable from 1 April 2020 to 30 September 2020, such interest shall not constitute the gross income of that bank or financial institution in the basis period for that year of assessment.

A deduction from gross income for loan impairment shall however not be allowed.

→ Malaysia

FAQs on Advance Pricing Arrangement (APA) Treatment in relation to COVID-19

On 16 June 2020, the IRB issued FAQs on Advances Pricing Arrangements (APA) treatment in relation to the COVID-19 pandemic. The salient points in the FAQs are as follows:

- IRB is not accepting any new APA application from businesses affected by COVID-19 until further notice;

- Taxpayers having an on-going APA being reviewed by the IRB will continue to be reviewed, based on the information previously submitted as well as on the arm's length principle and benchmarking analysis of normal economic and market conditions, i.e. pre-COVID;
- Amendments and substantial updates on material changes to on-going applications will not be allowed, as the full impact of the pandemic is highly uncertain at this point of time;
- Depending on the facts and circumstances of the case, the term test may be applied in order to take into account the impact of the pandemic on the proposed covered transaction. An Annual Compliance Report (ACR) will be required to be submitted annually notwithstanding the application of the term test. Any compensation adjustment shall be made at the end of the APA covered period;
- If taxpayers with on-going APA see that the probable impact of the pandemic is significant, they may opt to withdraw from the APA application. Taxpayers may file a new APA application based on the new circumstances at a later stage;
- Taxpayers that have concluded APA are required to comply with all the critical assumptions stated in the APA;
- If taxpayers cannot fulfil the critical assumptions in the APA due to COVID-19, the taxpayer may either revise or apply for the cancellation of the APA;
- Revision of APA must be notified to the IRB within 30 days of becoming aware of the need for a revision due to the economic and business impacts from COVID-19;
- Expired APA can be renewed under similar terms and conditions. Renewals will not be allowed if the critical assumptions in the expiring APA are no longer valid due to material changes on taxpayers business as a result of the pandemic.

→ Malaysia

Tax Incentives for Bionexus Status Companies

The IRB issued Public Ruling No.1/2020 – Tax incentive for Bionexus Companies - to incorporate the substantial activities requirements, and exclude income from intellectual property (IP) rights following the review of tax incentives and recommendations by the Forum on Harmful Tax Practices.

SUBSTANTIAL ACTIVITIES REQUIREMENTS

To be eligible for the tax incentive, the Bionexus Company (BNX) must have an adequate number of full-time employees and knowledge workers in Malaysia; and incur an adequate amount of annual operating expenditure or investment in fixed assets to carry on a qualifying activity.

EXCLUSION OF INCOME FROM IP RIGHTS

Royalty and other income derived from IP rights will be excluded for the tax exemption.

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→ Myanmar

Trademark registrations

On August 28 2020, the Ministry of Commerce issued Order No. 63/2020, calling for the public to re-register existing trademarks from 1 October onwards during the soft-opening phase which will last until 31 March 2021. In this time period, existing trademark owners are given priority rights for the registration. During the soft-opening period, owners of existing trademarks may only register through a service provider or a law firm. Later, the trademark owner may apply electronically by himself or again via a service provider or law firm.

This is an important further step in strengthening the IP-laws in Myanmar and in transitioning trademark registrations from the “first-use” to a “first-register” system. Registration fees for trademarks and payment methods are yet to be announced, but expected to be clarified anytime soon with the notification putting the Trademark Law into force. Under the Trademark Law, registered trademarks in Myanmar will be valid for 10 years from the filing date.

→ Myanmar

E-tax payment system

The Internal Revenue Department announced that starting from 1 October 2020, all companies in Yangon are required to use the new e-tax payment system for income, commercial and/or special commodity tax payments.

The electronic system will in future be expanded to other filings as well, and is generally just a part of the ongoing fundamental and unprecedented reform of the tax regime in Myanmar.

→ Myanmar

Union Tax Law 2020

On 28 August 2020, the parliament ([Pyidaungsu Hluttaw](#)) approved the Union Tax Law 2020 with effect as of 1 October 2020, following the beginning of the new financial year in Myanmar.

Despite the government proposal of a 30 percent blanket tax rate on all unassessed (undisclosed) sources of income, the Hluttaw Committee succeeded with their counter proposal to gradually raise the tax rates instead, and to thus ease the impact on business during the global pandemic of COVID-19.

The conditional tax amnesty has been introduced in the last financial year to encourage taxpayers to go compliant with regard to income generated before 1 October 2019.

If the taxpayer invests into a new business or is acquiring/expanding an existing one, if they are investing into the construction or purchase of capital assets, the income tax rates on the remaining income of undisclosed source are gradually raised to below rates compared to the Union Tax Law 2019-2020:

PREVIOUS INCOME LAYERS	NEW INCOME LAYERS	PREVIOUS INCOME TAX RATES	NEW INCOME TAX RATES
1 – 100,000,000 MMK	1 – 100,000,000 MMK	3 %	3 %
100,000,001 – 300,000,000 MMK	100,000,001 – 300,000,000 MMK	5 %	5 %
300,000,001 – 1,000,000,000 MMK	-	10 %	10 %
1,000,000,001 – 3,000,000,000 MMK	-	15 %	15 %
-	300,000,001 – 3,000,000,000 MMK	-	-
3,000,000,001 – above	3,000,000,001 – above	30 %	30 %

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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 – with various modifications – has been extended until date to one of the longest and strictest quarantine measures in the world.

As of 2 September 2020, the COVID-19 cases confirmed by the Philippine Department of Health have reached a total of 226.440, with 3.623 fatalities.

Most of the cases are recorded within Metro Manila and the surrounding provinces. A surge in cases in August lead to another partial two-weeks “lockdown” for Metro Manila and other parts of the country. Since then, the government has gradually been loosening the COVID-restrictions based on an individual risk level assessments for each region.

The Philippine economy took a hard hit from the COVID-crisis. Unemployment rose from a record low of 4.5 percent in 2019 to a current estimate of 17.7 percent. The GDP dipped by -16.5 percent from 6.7 percent (Q4/2019) on a YoY basis (Q2/2020). This equals the largest drop since its recording.

Since businesses are gradually ramping up their operations, movement restrictions are partly lifted and public transport is slowly becoming available again, the economy seems to slightly recover.

The official numbers for the 3rd Quarter will be key to determine the rebound of the economy, particularly the consumer confidence on which the Philippine economy significantly depends.

With regard to 2021, analysts do expect the economy to rebound into its previous strength

(approx. 6 percent GDP growth). Again, the following months will be crucial to give a better estimate for the future, since the Philippines has still not overcome their first wave of COVID-cases, and little changes are seen in the government's approach to tackle the crisis.

The main economic measures to cushion the impact of the COVID-crisis are, amongst others:

- » *Bayanihan to Recover as One Bill* ([Bayanihan 2](#)). The act has been passed by the Congress on 20 August 2020, allocating a total of PHP 165.5 billion to government efforts to quell the

COVID-19 pandemic and to help reviving the weakened economy.

- » Corporate Recovery and Tax Incentives for Enterprises Act ([CREATE](#)), formerly known as Corporate Income Tax and Incentives Rationalization Act ([CITIRA](#)) and Tax Reform for Acceleration and Inclusion ([TRAIN II](#)), will be prioritized to be passed this year. The latest draft indicates a Corporate Income Tax ([CIT](#)) rate reduced from 30 percent to 25 percent, followed by a 1 percent annual reduction beginning 1 January 2023, until the CIT rate will have been reduced to 20 percent in 2027.

→ Philippines

Digital Service Tax Bill

In the light of the growing demand for digital services, similar to other countries, the Philippines is considering to implement a Digital Service Tax Bill. The latest draft has recently been approved by the House Committee on Ways and Means, seeking to impose a 12 percent VAT on "digital services" to B2B and B2C customers. A [Digital Service Provider](#) is defined as "a service provider of a digital service or goods to a buyer, through operating an online platform for purposes of buying and selling of goods or services or by making transactions for the provision of digital services on behalf of any person."

In addition to the VAT regulations, an earlier version of the bill provided for income tax regulations on digital services, but the current version of the bill does no longer mention such provisions. Hence, the general tax laws for services provided on income derived from sources within the Philippines may apply.

The bill still needs to pass the various readings at the House of Representatives and the Senate before the Philippine President may sign such act into law. Hence, further amendments and the potential implementation date need to be monitored.

→ Philippines

Court digest: Liberalization of construction industry

In the last decade, the Philippines continuously liberalized applicable foreign ownership restrictions. Few restricted industries remain under the regulations of the Philippine Constitution, the Foreign Investment Act and its Eleventh Regular Foreign Investment Negative List, the Omnibus Investment Code and other industry specific regulations. Based on legislative provisions "construction" is generally not considered a nationalized activity.

Nonetheless, the Philippine Contractors Accreditation Board ([PCAB](#)), through its Implementing Rules and Regulations of Contractor's License Law, indirectly implemented foreign ownership restrictions to obtain PCAB standard licenses, generally required to provide construction works in the Philippines.

A Supreme Court decision released on 26 August 2020 ([PCAB v. Manila Water – G.R. No. 217590](#)) voided the above-mentioned rules of foreign firms not being entitled to a general

contractor's PCAB license when involved in a Philippine project.

Since the decision of the Supreme Court has only been released very recently, the response of PCAB remains to be seen. Particularly, if and to what extent the voided rules may be amended. For example, a sort of security bond might eventually become applicable. However, the judges of the Supreme Court, in a clear decision of 14-1 votes, strongly followed the arguments for a leveled playing field in the construction business and the economic benefits this may relate to.

It seems that the Philippines (including its courts) follow up on their commitment to liberalizing their economy. The Supreme Court decision may potentially also have an effect on other industries where similar foreign ownership restrictions apply.

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→ Singapore

Update on COVID-19 in Singapore

GENERAL SITUATION

After the partial lockdown, called Circuit Breaker, in April and May this year, Singapore has implemented a plan for the gradual resumption of business and social activities in three phases. Currently, Singapore is in Phase 2 of this resumption, in which business and social activities are allowed - subject to safety management measures, such as social distancing, limitations in social gatherings and the obligation to wear a mask. The government of Singapore has already amended some of the restrictions in force during Phase 2, and further easing of restrictions might still be announced during Phase 2. At this point in time, it is unclear when the beginning of Phase 3 - which will constitute a broader resumption of business and social activities - will be announced. Concerns of a second wave and the global pandemic situation make it unlikely for any general resumption of business and social activities to be expected any time soon. However, there are constant small adjustments

and updates in the regulatory framework concerning COVID-19 in Singapore, as well as their practical implementation. Therefore, it is crucial to stay updated and to ensure that all business and personal decisions are based on the latest updates and anticipate potential future changes.

MINISTERIAL STATEMENT AUGUST 2020

The Minister of Finance of Singapore, Mr Heng Swee Keat has delivered a ministerial statement on 17 August 2020 in which he highlighted the severe economic impacts of COVID-19 on the Singapore economy. In the light of these implications, Singapore will continue to partly subsidize wages; it will provide support for severely hit sectors; and will try to prepare for growth opportunities in the post-COVID-19 world. Among others, Mr Heng has addressed the following measures:

aa. Job Support Scheme extension

The Job Support Scheme (JSS) will be extended to March 2021 but on a lower support level. Under the JSS, the Government co-funds a certain percentage, depending on the industry, of the first SGD 4,600 of gross monthly salary of local employees (Singaporeans and Permanent Residents). Eligible businesses from the aerospace, aviation and tourism sectors are supported with 50 percent of the first SGD 4,600 of monthly salary. Eligible businesses from specific other sectors are supported with wage co-funding of 10 to 50 percent of the first SGD 4,600 of monthly salary. The additional payouts will occur in March and June 2021.

For further information please refer to the following links:

- <https://www.iras.gov.sg/irashome/Schemes/Businesses/Jobs-Support-Scheme--JSS-/>
 - https://www.singaporebudget.gov.sg/docs/default-source/budget_2020/download/pdf/aug2020_annexb1
-

bb. Jobs Growth Incentive

Sectors which are not severely impacted by COVID-19, such as the biomedical sciences, financial services and ICT sector, will be eligible for co-payment of salaries of new local employees over the next 6 months. The Government will provide salary subsidies of up to 25 percent for local hires below 40 years of age, and up to 50 percent for local hires of 40 years of age or above. The salary subsidy is subject to cap and will be provided for a 12 months period.

cc. Update on the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment

The latest Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment which has been updated in March 2020, and which provides guidelines for employers to manage excess manpower during COVID-19, are currently being revised. The new Tripartite Advisory

will contain guiding principles on fairly conducting retrenchment. We will follow-up on this topic once the updated Tripartite Advisory has been published.

Travel Restrictions

Currently, Singapore has strict travel restrictions in place. In most cases, **short-term visitors** are not allowed to enter Singapore unless they qualify for special travel arrangements, such as the Singapore-China Fast Lane with China or the periodic Commuting Arrangement and the Reciprocal Green Lane with Malaysia. Special travel arrangements for essential business travel between Singapore and Japan have been announced to be implemented by early September 2020. From the 1 September 2020, travelers from Brunei and New Zealand will be allowed to enter Singapore if they have applied for a so called Air Travel Pass. These travelers will not be required to serve a Stay Home Notice (SHN), but would need to undergo a COVID-19 test upon arrival.

Residents (Singapore citizens and permanent residents) as well as **long-term pass holders** (such as employment passes) or holders of in-principle approvals with valid approval letter for entry may enter Singapore. These travelers need to serve a 14-days SHN either at home or in a SHN Dedicated Facility, and must be tested before the end of the SHN. Only travelers with a travel history in specific countries will be allowed to serve a reduced SHN of 7 days at home. From 15 August 2020 onwards, travelers from Germany must serve their SHN in an SHN Dedicated Facility.

For more information about Singapore's measures for inbound travelers please refer to the following links:

- <https://www.ica.gov.sg/covid-19/ArrivalSG>

Please find more information about special travel arrangements here:

- <https://safetravel.ica.gov.sg/>

→ Singapore

Evolving Insolvency legal landscape in Singapore

Singapore's new Insolvency, Restructuring and Dissolution Act, previously known as the Omnibus Bill, came into force on 30 July 2020 ([IRD Act](#)). It has been called an Omnibus Bill because it combines Singapore's laws relating to personal bankruptcy, corporate insolvency and debt restructuring under one main piece of legislation, and 48 pieces of subsidiary legislation. Together with the enhancements and amendments to the Companies Act which have been passed in 2017, the IRD Act is intended to benefit companies experiencing financial difficulties, as well as to protect the interests of creditors, shareholders and other stakeholders.

With respect to corporate insolvency and debt restructuring, the IRD Act provides new "helplines" for companies, which include:

- a. Statutory restrictions on contractual rights which are triggered by the commencement of various debt restructuring proceedings (known as ipso facto clauses).

Without such restrictions, a company which entered into negotiations with a creditor to restructure its debt would trigger an accelerated repayment of all its loans, and this would seriously cripple any company's efforts to properly engage in any discussions of this nature.

This statutory restriction found in Section 440 of the IRD Act applies to contracts entered into force after 30 July 2020.

- b. Enlarging the range of causes of action which may be funded by third parties, specifically certain officeholder avoidance actions, which may otherwise not be pursued due to a lack of funds.

The IRD Act provides that liquidators and judicial managers may now assign to third parties the proceeds of legal actions in relation to undervalue transactions, unfair preferences, fraudulent and wrongful trading or delinquent company officers. Such assignments would be made in exchange for the third party

funding the legal action to pursue the company's claims.

- c. Summary procedure to dissolve companies that have insufficient assets to pay for the administration of the winding up.

The company would need to show that, in all likelihood, it has insufficient assets to cover the winding up expenses, and that there is no need to investigate the affairs of the company. This summary procedure enables the company to avoid the cost and expense of appointing liquidators or further court processes, thus preserving the maximum possible value for repayment to creditors and distribution to shareholders. Going forward, we would advise that any Companies seeking to dissolve their operations should consider their eligibility for the summary procedure in order to minimize their expenses.

Prior to the IRD Act coming into force, the Companies Act has been amended in 2017, and significant changes were made to the Singapore scheme of arrangement procedure, which include introducing several concepts inspired by Chapter 11 of the US Bankruptcy Code, such as a broad "world-wide" stay, debtor-in-possession rescue financing and cross-class cram down mechanics. This was an important step to reform the corporate restructuring and insolvency framework in Singapore. Together with adding the mechanisms and provisions introduced by the IRD Act, the government hopes for Singapore's attractiveness as a venue for cross-border debt restructuring to be significantly increased.

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→ Thailand

Proposed amendments to the Civil and Commercial Code

In June, the Cabinet has approved a draft amendment of the Civil and Commercial Code (CCC), to facilitate business in Thailand, specifically to simplify corporate compliance and transactions.

REDUCTION OF PROMOTERS AND SHAREHOLDERS

Under the amendment, a company limited may be established with only two shareholders, reducing the current requirement of three shareholders. The change would be in line with past changes. Until 2008, a company required seven shareholders, which has subsequently been reduced to the current requirement of three shareholders.

JURISDICTION OF THE REGISTERED OFFICE OF THE DEPARTMENT OF BUSINESS DEVELOPMENT

The amendment allows for private companies and partnerships to submit applications such as registration and subsequent corporate changes to any registered office of the Department of Business Development. Currently, the competent office is

determined by the location of the company or partnership. Additionally, the law will allow reducing fees and document requirements.

SHAREHOLDER MEETINGS

Under the new rules, a shareholder meeting will require a minimum quorum of two shareholders. Furthermore, the approved measures to hold shareholder and board meetings electronically will be adopted by the law. Additionally, the requirement to publish a notification of the shareholder meeting in a local newspaper will be abolished, except for cases where bearer share certificates have been issued.

MERGER

Under the amendment, the CCC will receive a dedicated provision governing mergers of companies. Under the current law, the CCC only governs the amalgamation of companies, whereby two companies form a new company (Companies A and Company B form Company C). Under the merger provisions, companies will be allowed to merge, meaning one of the existing companies survives (Company A and Company B merge into Company A).

→ Thailand

Investment opportunities

The Thai Board of Investment (BOI) has announced several measures to expedite the economic recovery of Thailand:

- Measures to enhance productivity, namely upgrades in the interest of energy conservation, automation, digitalization, and expenses on research and development. Suitable projects may receive an exemption from corporate income tax for up to three years (a cap of 50 or 100 percent of the investment applies), as well as exemption of import duties on machinery used in these measures. The application for the incentive has to be filed by 30 December 2020.
- Investments in the development of human resources in science, technology engineering, and math. Suitable investment may be added to existing caps for corporate income tax exemption. Applications have to be filed by 30 December 2021.
- Companies investing at least THB 1 million in setting up training and education programs endorsed by the Ministry of Science and Technology to develop human resources may be granted up to five years of corporate income tax exemption, capped at the amount of the investment. Applications have to be filed by 30 December 2021.

- Furthermore, the BOI has announced an additional incentive on investment in activities of the category A1 to A3 incentive of up to 5 years reduction of corporate income tax after the initial tax exemption, provided a minimum investment of THB 500 million is made within the period of February to 30 December 2020,

or THB 1 billion from February to 30 December 2021. Investments have to be made in one of the 120 targeted activities, as announced by the BOI.

→ Thailand

Value Added Tax

The reduction of Value Added Tax to 7 percent will be extended for another year, for the period of 1 October 2020 to 30 September 2021 (the statutory rate is 10 percent). Sale of goods and ser-

vices and imports of goods and services are subject to 7 percent VAT. Certain sales of goods and provision of services are subject to a rate of zero percent VAT.

→ Thailand

COVID-19

GENERAL INFORMATION

Thailand has not had a case of local transmission of COVID-19 for more than three months. Overall, Thailand has recorded about 3,400 cases of COVID-19 and 58 fatalities. However, the government has announced that the Emergency Decree will be extended for another month. The Emergency Decree allows for the government to take necessary measures to mitigate the impacts of the pandemic.

Expiration of visa and reporting waiver

The granted visa waiver (including requirements to do 90-day reports) will expire on 26 September 2020. The authorities have announced further extensions to be unlikely. Thus, foreigners should be prepared to return to the normal visa and reporting requirements.

Entry to Thailand

Certain Thai and non-Thai nationals are permitted to enter Thailand, provided they fall under one of the eleven groups permitted to enter Thailand, and provided that they comply with the statutory requirements.

Foreigners working in Thailand (*with a work permit*), may enter the Kingdom if they obtain a certificate of entry from a Thai embassy abroad (*attesting that the holder falls under one of the eleven groups permitted to enter the Kingdom*), a health certificate showing negative testing for COVID-19 (issued no more than 72 hours prior to traveling), a health insurance policy with a minimum coverage of at least USD 100,000 for the treatment of COVID-19.

Upon arrival in Thailand, you will have to do a medical examination at the airport (*general fever and symptom screening*), install the government mobile phone application to track the whereabouts of the person, and enter a 14-day quarantine. Please note that you have to bear the costs of the quarantine. During all times, you are required to comply with the instructions issued under the Emergency Decree.

SOCIAL SECURITY CONTRIBUTIONS

Contributions to the Social Security will be reduced from 5 to 2 percent for the period of September to November 2020. The reduction applies to the contributions of employers and employees.

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→ Vietnam

New regulations on incentives for development of solar energy in Vietnam

On 6 April 2020, after a long gap since the expiry of Decision No. 11/2017/QĐ-TTg (expired on June 30, 2019) (DECISION 11), the Prime Minister issued Decision No. 13/2020/QĐ-TTg (effective as of 22 May 2020) on incentives for the development of solar energy in Vietnam (DECISION 13). This Decision does not only provide a new price for solar energy, but also more details on grid-connected solar power projects and rooftop solar power (where the previous DECISION 11 was not clearly regulated).

Key issues

NEW FEED-IN TARIFF

Under DECISION 13, Feed in Tariff (FIT) for solar energy has been reduced as follows:

- Floating solar energy projects: UScent 7.69/kWh equivalent to 1.783 VND/kWh (previously, UScent 9.35/kWh equivalent to 2.086 VND/kWh);
- Ground mounted solar energy projects: UScent 7.09/kWh equivalent to 1.644 VND/kWh (previously, UScent 9.35/kWh equivalent to 2.086 VND/kWh);
- Rooftop energy solar energy systems: UScent 8.38/kWh equivalent to 1.943 VND/kWh (previously, UScent 9.35/kWh equivalent to 2.086 VND/kWh)

The FIT shall be applied within 20 years as of the commercial operation date (COD).

In order to apply the price above, grid-connected solar power projects (floating solar energy projects and ground mounted solar energy projects) must satisfy the following conditions:

- Obtained in-principle investment decision before 23/11/2019;
- COD of the whole or part(s) of project from 01/7/2019 to 31/12/2020; and
- Solar cell efficiency of more than 16 percent or module efficiency of more than 15 percent.

DECISION 13 provided special incentives for projects located in Ninh Thuan province. Particularly, projects (i) that have been included in the electricity development planning of the province/nation before 01/01/2021; (ii) with COD before 01/01/2021; and (iii) with a total capacity not exceeding 2,000 MW, FIT at UScent 9.35/kWh equivalent to 2.086 VND/kWh, shall be applied for within 20 years as of COD.

Price for other grid-connected solar power projects not satisfying the above conditions shall be subject to a competitive mechanism.

For rooftop energy solar energy systems, the projects must satisfy the following conditions:

- Have been connected to grid up to 35kV of EVN and sold to EVN;
- Reached COD and had verified meter readings in the period from 1 July 2019 to 31 December 2020; and
- Capacity not exceeding 1 MW.

For projects not fulfilling these conditions, the purchase price will be agreed between the parties.

With the new regulation, it can be seen as a challenge for solar energy investors to race against time in order to get the COD by 31/12/2020 amid the extraordinary circumstances related to the COVID-19 pandemic. Also, with a reduced price, solar investments are less likely to attract the investors than before, unless the capital expenditure for investment in solar farms is reduced correspondingly.

ROOFTOP ENERGY SOLAR ENERGY SYSTEMS

DECISION 13 expanded the definition of a purchaser which is not only limited to EVN as previously, but also comprises other organizations and individuals purchasing electricity from the seller. For the seller, DECISION 13 removed the provision that the owner of rooftop energy solar energy systems is allowed to sell **SURPLUS ELECTRICITY** to the buyers only. It provides instead that the owner may sell **WHOLE OR A PART** of the electricity produced to either EVN or other organizations and individuals not using power grids of EVN. DECISION 13 thus opened more room for the owner to conduct transactions at their discretion.

Particularly, if the seller sells electricity to EVN, they must sign a PPA in accordance with a template provided by the Ministry of Trade and Industry. In case the purchaser is not EVN, both parties may negotiate and enter into a contract with terms and conditions based on their intention and purpose, including the price - provided it complies with the legal regulations.

Up to today, there is no PPA template to be used for selling electricity from rooftop energy solar energy systems. Until the specific template is issued, the PPA template provided in Circular 05/2019/TT-BCT shall be applied. With a mandatory PPA, solar power investors may find it less favorable as there are certain terms and conditions included which cannot be negotiated. The upcoming PPA is expected to fix problems inherent to the current PPA in order to balance benefits for both, seller and purchaser.

Upon entering into a PPA with EVN, EVN shall invest, install and maintain electrical measuring instruments.

GRID-CONNECTED SOLAR POWER PROJECTS

DECISION 13 provided that the seller shall be responsible for investing, installing, operating and maintaining electrical measuring instruments, power lines and transformers (if any) from solar farms to the location where the power is connected to power grids of EVN (**GRID CONNECTION**). The grid connection must be in compliance with the approved planning. When the grid connection is different from the place where the electrical measuring instruments are located, the seller shall be responsible for a loss of electricity along the power line and a potential depreciation of transformers of power plants.

Grid-connected solar power projects shall be subject to incentives regarding tax, land use and water surface use in accordance with applicable regulations and laws.

Purchasers then shall be responsible for purchasing the entire electricity produced from solar power projects connected to the national grid in compliance with the regulations, and prioritizing a balancing to fully utilize power generation capacity of solar power projects.

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→ Vietnam

EU-Vietnam FTA entered into force – New perspectives for trade in services

On 8 June 2020, Vietnam ratified the European Union - Vietnam Free Trade Agreement (EVFTA) and the European Union - Vietnam Investment Protection Agreement (EVIPA). The EVFTA entered into effect on 1 August 2020 and shall provide expansive preferential market access for goods traded between Vietnam and the European Union. The corresponding negotiations had been concluded in December 2015, after almost three years and 14 rounds of negotiation. The EVFTA is a new generation Free Trade Agreement between Vietnam and the EU. In June 2018, it was split into two separate agreements, i.e. one on trade and one on investment protection, after the European Court of Justice defined the limits of the Union's exclusive competence on 16 May 2017, with regard to the EU-Singapore Free Trade Agreement (FTA). It should thus be noted that the EVIPA will only enter into force after all EU members have ratified the Agreement - which may take years.

While particularly the effect of the agreement on trade in goods with its tariff reductions has already seen broad media coverage, the liberalization in the services sector is not yet known to many entrepreneurs, although the practical impact is significant. We will therefore shed a light onto the respective Chapter 8 of the EVFTA, which offers new opportunities to EU investors, as Vietnam further liberalized its services markets by offering access beyond their WTO commitments. This will allow a strongly improved access to Vietnam's market for EU entrepreneurs, either as cross-border business or by way of establishing a local service entity. The FTA defines such "establishment" as setting up - including the acquisition - of a juridical person or the creation of a branch or a representative office in the Union or in Vietnam, respectively, with a view to establishing or maintaining lasting economic links.

MARKET ACCESS

In those sectors where market access commitments are undertaken, there are now various restrictions on measures not to be adopted or maintained by a Party, either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments. It is therefore not permitted to impose limitations on the number of enterprises

that may perform a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test. Furthermore, limitations on the total number of operations, the total quantity of output or the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test are not permitted.

Notably, limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment are now similarly banned as measures which restrict or require specific types of legal entity or joint ventures. This will allow for foreign investors to hold 100 percent of shares and hence fully control the company in Vietnam in sectors which previously required a joint venture with a local partner. Furthermore, so called Performance Requirements are restricted, which e.g. include export quota, domestic content or procurement requirements as well as mandatory technology transfer.

COMMITTED SERVICE SECTORS

The Specific Commitments beyond those under WTO would cover investments in many services sectors. Among others, EU investors may stronger engage in the field of computer services, to which Vietnam fully committed beyond their WTO commitments. As a result, all future technologies in the computer sector are captured, and the EU suppliers may choose from a wide range of computer services to be offered in Vietnam. Most telecommunication services will further require joint ventures with local partners. But wholly foreign owned companies will be permitted to provide internet and/or value added services such as emails, online information and data processing.

Also the provision of cross border higher education services by EU suppliers is now possible, based on Vietnam's new commitments. This will allow for such services from to be provided from EU territory directly to consumers in Vietnam.

One of the most important sectors for EU investors are distribution services. The EVFTA allows for an improved market access for services between the parties. One important aspect in this regard is that Vietnam commits to phase out the

Economic Needs Test (ENT) which has so far been applicable to secondary and subsequent retail establishments. The ENT requirement will be phased out five years after entry into force, i.e. from 2025. Before that, no ENT will already apply for outlets beyond the first one which are sized less than 500 sqm.

Furthermore, Vietnam liberalized the cross border passengers and freight transportation and offered better conditions to EU investors in establishing their companies in Vietnam to provide maritime transport services. This includes a liberalization of the maintenance and repair of vessels services as well as maritime agency services. EU investors may now also supply cross border container station and depot services, maritime cargo handling as well as container handling. They may further supply storage and warehouse services without limitations, as well as dredging services in a joint venture with a local partner.

The FTA also provides further market access in various other services sectors such as air transport ground handling services and in-flight meal serving services, postal services and environmental services but also facility cleaning services (including disinfecting and exterminating), packaging services, trade fairs and exhibitions services, rental/leasing without operators relating to machinery and equipment, nursing services, physiotherapists and paramedical personnel.

CONCLUSION

The EVFTA sets a good basis for sustainable growth, mutual benefits in several sectors, and might be helpful in the current time of global pandemic and the future beyond, to balance trade relations between the EU and Vietnam. Foreign investors will face a range of new opportunities and may consider Vietnam as a very interesting business destination in the ASEAN region.

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→ Upcoming Webinar: SHAPING THE NEW NORMAL

Corporate Re-Organization in ASEAN: How to get prepared for post COVID-19 times

The ongoing pandemic may keep us from offering face-to-face events, but it will not keep us from providing valuable support and insights for your business ventures in the ASEAN region – during and beyond the crisis.

Join our webinars and get yourself updated on opportunities, challenges and the most important aspects in dealing with partially quite volatile regulatory environments in times of COVID-19.

Whatever our altered normality with or without pandemic will look like in detail, entrepreneurs

around the globe will need to revise and adapt their existing corporate structures to a still undefined “New Normal”. A task which considerably gains complexity in cross-border ventures. Besides the fundamental questions of profitability and feasibility, different corporate, labor and tax regulations have to be taken into account, resulting in a colorful bouquet of opportunities and challenges alike.

WEDNESDAY, 9 SEPTEMBER 2020: INDONESIA | MALAYSIA | VIETNAM

Time	CET	10.00 – 11.30 am
	Indonesia	03.00 – 04.30 pm
	Malaysia	04.00 – 05.30 pm
	Vietnam	03.00 – 04.30 pm

PLEASE REGISTER HERE:

<https://attendee.gotowebinar.com/register/1186465813417948944>

THURSDAY, 10 SEPTEMBER 2020: SINGAPORE | THAILAND

Time	CET	10.00 – 11.00 am
	Singapore	03.00 – 04.30 pm
	Thailand	04.00 – 05.30 pm

PLEASE REGISTER HERE:

<https://attendee.gotowebinar.com/register/8015185088836730638>

In the course of these sessions, we will provide you with important aspects of the regulatory environment and specific pitfalls entrepreneurs should consider in structuring their operations in **INDONESIA, MALAYSIA AND VIETNAM** ([September 9, 2020](#)), as well as in **SINGAPORE AND THAILAND** ([September 10, 2020](#)). Our presenters will be

Markus Schlueter (INDONESIA), Michael Wekezer (MALAYSIA) and Stefan Ewers (VIETNAM), Paul Weingarten (SINGAPORE) and Martin Chrometzka (THAILAND).

Of course you will have the opportunity to interactively join our Q&A session. We will be more than happy to answer your specific questions.

The webinar is free of charge.

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