

Rödl & Partner

RESUMING MOMENTUM

Consolidation and Reorganization in APAC

Outlook to a Post-Covid-19 Economy



“COVID-19 is not only a major crisis in public health systems, but also a shock to the global economy. Many pre-COVID-19 developments will now accelerate and challenge business leaders even more: Consider the technological disruptions and how they impact the way we work and do business; existing political tensions are likely to intensify as the blame game has just begun; international cooperation may take a back seat as each country responds independently to the pandemic crisis; resilience in supply chains has already been a topic coming up in the last few years, raising trade disputes in the region, and it will even increase in importance during the COVID-19 crisis. Business Leaders must respond to these challenges and need to rethink the strategy for their Asia-Pacific business.”

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Introduction: Rethink your Asia-Pacific business

COVID-19 constitutes an unprecedented shock to the global economy. Lockdowns, suspension of business, travel restrictions, disruption in supply chains and plunge in consumption are further amplified by growing unemployment rates and massive governmental stimulus packages worldwide. The dynamics of this pandemic event, the lack of a unified global response, the uncertainties of future waves and the intensity of COVID-19 infections as well as subsequent governmental responses make it extremely difficult for business leaders to navigate this crisis.

How might the post COVID-19 business environment look like and how may a business leader take the right decisions today to allow for a fast recovery and a stronger emergence of its business in the post COVID-19 world?

The significant footprint of European companies in the Asia-Pacific region, the predicted importance of this region in the future and the impact of COVID-19 on this diverse geographical area call for the Asia-Pacific business to be one of the cornerstones of any post-COVID-19 strategic business planning.

Business leaders should now consider, inter alia, the following questions:

1. What is my current business structure in the Asia-Pacific region?
2. What is my country-related risk exposure and how might this exposure change in the short, medium and long term?
3. How can I adjust my existing business structure in the Asia-Pacific region to not only survive the current crisis but to also revive my Asia-Pacific business in the post COVID-19 world?
4. Where are my future markets, customers and business partners, and is my current business structure sufficient to serve them?

Rödl & Partner has been present in Asia-Pacific since 1994 and has, like their clients, expanded significantly in the region. We are present in all relevant markets and provide legal, tax, accounting and audit services, allowing our clients to benefit not only from a 360-degree view on their business operations but also from a deep understanding of the Asia-Pacific region.

In order to assist your business during the COVID-19 crisis to have it emerge well-prepared in the post COVID-19 Asia-Pacific region, we may offer you the following support:

- Developing, implementing and maintaining a monitoring and reporting system which covers industry- and country-specific changes in the regulatory framework that might affect your business;
- Interim subsidiary management, compliance, reporting and communication;
- Assessing your current set-up in the Asia-Pacific region from a legal and tax perspective with recommendations for consolidation towards a leaner and more efficient structure;
- Coordinating and conducting a regional restructuring exercise if so required; and
- Providing regional BPO (company secretarial, tax compliance, payroll and accounting) services to ensure ongoing compliance within a lean business structure.

We hope the following outlook of the region and the country-specific options will be helpful. Please feel free to approach us to discuss how we can best assist you in the Asia-Pacific region.

FACTORS TO CONSIDER WITH REGARDS TO AN ECONOMIC OUTLOOK

- Any economic outlook for the year 2020 and the following years depends on the natural course of growth and spread of COVID-19 and the subsequent governmental responses as well as on the development and availability of effective drugs and vaccines which is currently predicted to take at least 12 to 18 months.
- Given the unknown factors, several economic scenarios have been published, varying from best to worst case scenarios or something in the middle.
- The figures provided on the next pages, issued by the International Monetary Fund and the Asian Development Bank in their most recent publications (both April 2020), seem to assume that the COVID-19 pandemic will end this year and that business will promptly normalise.

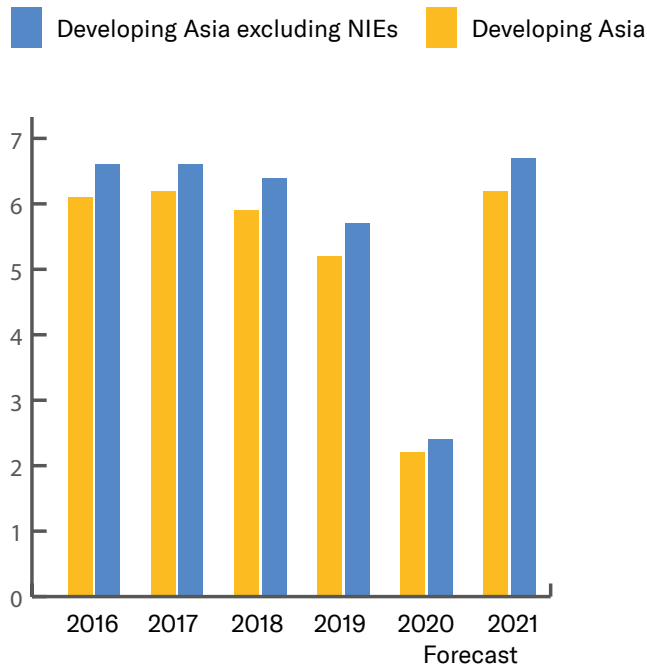
GENERAL PREDICTIONS CONCERNING COVID-19 IN THE ASIA-PACIFIC REGION

- It is difficult to predict the course and the outcome of the COVID-19 crisis in the Asia-Pacific region. However, one could learn from history. Some of the lessons from the Spanish flu pandemic have been recently published by the World Economic Forum:
 - Non-pharmaceutical interventions (NPIs) such as social distancing had positive medium term economic effects by flattening the curve and avoiding mass casualties; and
 - Early and decisive public intervention allowed for a relative increase in real economic activities once the pandemic ended.
- If we translate these observations of the past into the present and to the Asia-Pacific region, the following aspects should be highlighted:
 - Given the close proximity to China and the experiences of the SARS outbreak in 2002 to 2004, several Asian countries have acted early and aggressively in response to COVID-19;
 - NPIs, extended testing and the use of technology (e.g. contact tracing apps) have helped countries like South Korea, Hong Kong and Vietnam to stay ahead of the virus; and
 - Poverty, weak governance, low education levels and cultural obstacles might make the fight against COVID-19 more difficult in several developing countries in the Asia Pacific region.
- Considering these aspects, it is likely that several countries, in particular the more advanced economies of East Asia and some countries in Southeast Asia, might manage to maintain a form of normality in the course of COVID-19 with moderate impacts on businesses. Other developing countries in Southeast Asia and South Asia might struggle more in finding the right balance until a vaccine is developed and available. In those countries, any worst case scenario with a long-lasting economic crisis and rising of poverty levels might also have devastating effects on political stability as seen from the Asian Financial Crisis of 1997 to 1998.

Asia Pacific in figures

GDP GROWTH OUTLOOK IN DEVELOPING ASIA

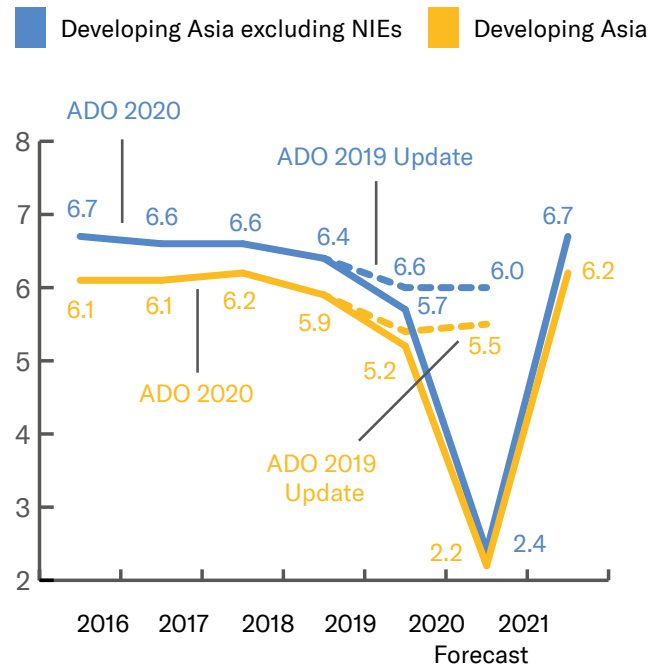
The outlook is for growth to stumble under COVID-19 as demand weakens and production stalls.



NIEs = newly industrialized economies of Hong Kong, China; the Republic of Korea; Singapore and Taipei, China.

Source: Asian Development Outlook database.

The COVID-19 outbreak has Asia reeling.



GDP = gross domestic product, NIEs = newly industrialized economies of Hong Kong, China; the Republic of Korea; Singapore and Taipei, China.

Source: Asian Development Outlook database.

GDP growth rate and inflation, in percent per year

	GDP growth				Inflation			
	2018	2019	2020	2021	2018	2019	2020	2021
Central Asia	4.4	4.9	2.8	4.2	8.2	7.5	7.6	6.3
Armenia	5.2	7.6	2.2	4.5	2.5	1.4	2.8	2.2
Azerbaijan	1.4	2.2	0.5	1.5	2.3	2.6	2.5	3.5
Georgia	4.8	5.1	0.0	4.5	2.6	4.9	4.5	3.0
Kazakhstan	4.1	4.5	1.8	3.6	6.0	5.3	6.0	5.7
Kyrgyz Republic	3.8	4.5	4.0	4.5	1.5	1.1	3.5	3.0
Tajikistan	7.3	7.5	5.5	5.0	5.4	8.0	9.0	8.0
Turkmenistan	6.2	6.3	6.0	5.8	13.2	13.4	13.0	8.0
Uzbekistan	5.4	5.6	4.7	5.8	17.5	14.6	13.0	10.0
East Asia	6.1	5.4	2.0	6.5	2.0	2.6	3.2	1.8
Hong Kong, China	2.9	-1.2	-3.3	3.5	2.4	2.9	2.0	2.5

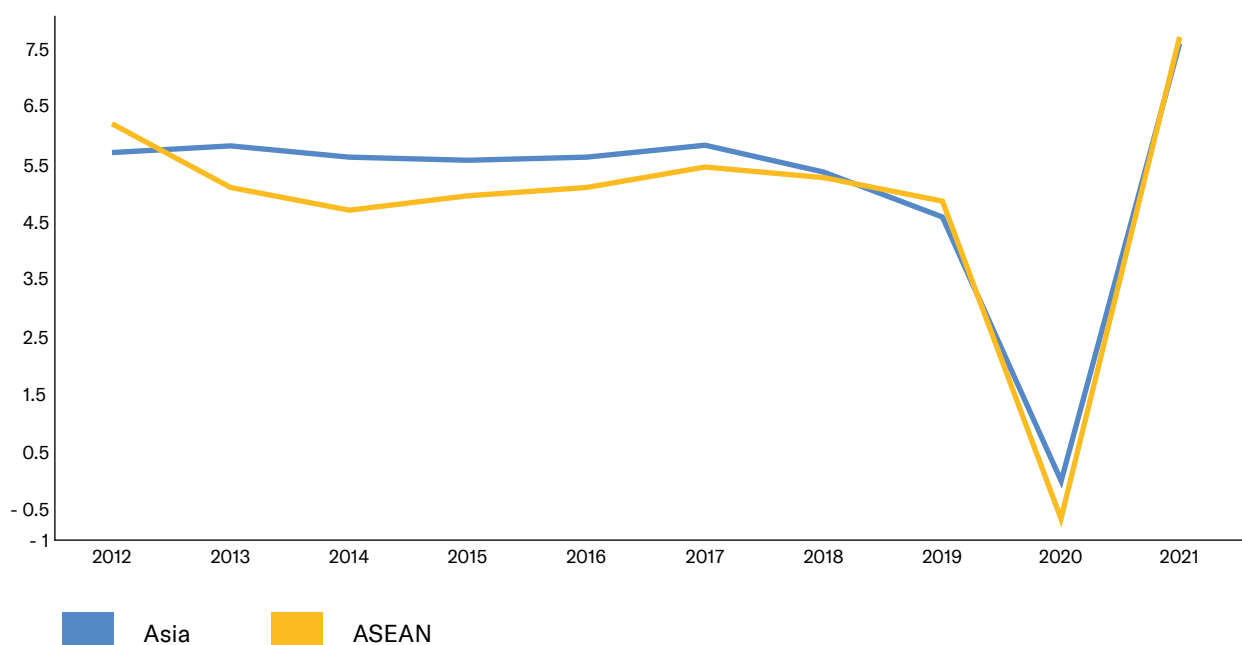
	GDP growth				Inflation			
	2018	2019	2020	2021	2018	2019	2020	2021
Mongolia	7.2	5.1	2.1	4.6	6.8	7.3	6.6	7.9
People's Republic of China	6.7	6.1	2.3	7.3	2.1	2.9	3.6	1.9
Republic of Korea	2.7	2.0	1.3	2.3	1.5	0.4	0.9	1.3
Taipei, China	2.7	2.7	1.8	2.5	1.3	0.6	0.4	0.8
South Asia	6.1	5.1	4.1	6.0	3.7	4.9	4.1	4.4
Afghanistan	2.7	3.0	3.0	4.0	0.6	2.3	2.3	3.5
Bangladesh	7.9	8.2	7.8	8.0	5.8	5.5	5.6	5.5
Bhutan	3.8	4.4	5.2	5.8	3.7	2.8	3.8	4.0
India	6.1	5.0	4.0	6.2	3.4	4.7	3.0	3.8
Maldives	6.9	5.7	-3.0	7.5	-0.1	0.2	1.0	1.2
Nepal	6.7	7.1	5.3	6.4	4.2	4.6	6.0	5.5
Pakistan	5.5	3.3	2.6	3.2	4.7	6.8	11.5	8.3
Sri Lanka	3.2	2.6	2.2	3.5	4.3	4.3	5.0	4.8
Southeast Asia	5.1	4.4	1.0	4.7	2.6	2.1	1.9	2.2
Brunei Darussalam	0.1	3.9	2.0	3.0	1.0	-0.4	-0.2	0.1
Cambodia	7.5	7.1	2.3	5.7	2.5	1.9	2.1	1.8
Indonesia	5.2	5.0	2.5	5.0	3.2	2.8	3.0	2.8
Lao People's Dem. Rep.	6.2	5.0	3.5	6.0	2.0	3.3	4.0	4.5
Malaysia	4.7	4.3	0.5	5.5	1.0	0.7	1.0	1.3
Myanmar	6.4	6.8	4.2	6.8	5.9	8.6	7.5	7.5
Philippines	6.2	5.9	2.0	6.5	5.2	2.5	2.2	2.4
Singapore	3.4	0.7	0.2	2.0	0.4	0.6	0.7	1.3
Thailand	4.2	2.4	-4.8	2.5	1.1	0.7	-0.9	0.4
Timor-Leste	-0.6	3.4	-2.0	4.0	2.3	0.9	1.3	1.8
Vietnam	7.1	7.0	4.8	6.8	3.5	2.8	3.3	3.5
The Pacific	0.4	3.8	-0.3	2.7	4.3	3.0	2.7	3.8
Cook Islands	8.9	5.3	-2.2	1.0	0.1	0.8	1.5	1.7
Federated States of Micronesia	0.2	3.0	1.6	3.0	1.4	1.0	0.5	1.0
Fiji	3.5	0.7	-4.9	3.0	4.1	1.8	1.5	3.5
Kiribati	2.3	2.4	1.6	1.8	2.1	-1.8	1.0	1.1
Marshall Islands	3.6	3.8	2.5	3.7	0.8	0.1	0.3	0.5
Nauru	5.7	1.0	0.4	1.1	0.5	3.9	2.8	2.3

	GDP growth				Inflation			
	2018	2019	2020	2021	2018	2019	2020	2021
Niue	6.5	-	-	-	10.1	-	-	-
Palau	1.5	-3.1	-4.5	1.2	2.0	0.6	0.4	0.8
Papua New Guinea	-0.8	4.8	0.8	2.8	4.7	3.6	3.3	4.4
Samoa	-2.2	3.5	-3.0	0.8	3.6	2.2	2.0	2.5
Solomon Islands	3.9	2.6	1.5	2.7	3.5	1.6	2.0	2.3
Tonga	0.2	3.0	0.0	2.5	7.0	4.1	1.3	2.2
Tuvalu	4.3	4.1	2.7	3.2	1.8	3.3	3.5	3.5
Vanuatu	2.8	2.8	-1.0	2.5	2.3	2.4	1.5	2.0
Developing Asia	5.9	5.2	2.2	6.2	2.5	2.9	3.2	2.3
Developing Asia excluding the NIEs	6.4	5.4	2.4	6.7	2.6	3.3	3.6	2.5

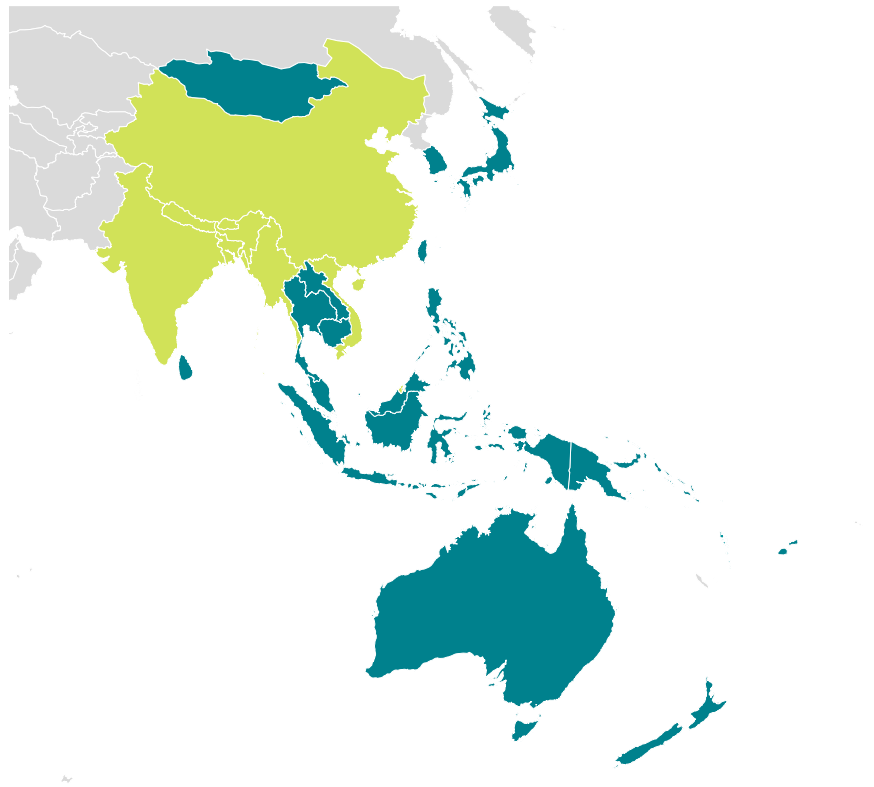
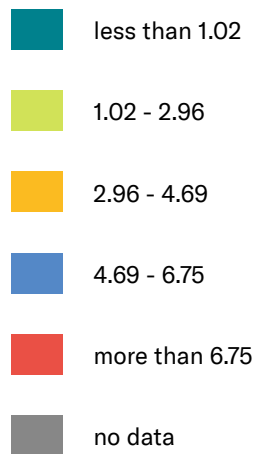
GDP = gross domestic products, NIEs = newly industrialized economies (Hong Kong, China; the Republic of Korea; Singapore and Taipei, China)

Source: Asian Development Bank <https://www.adb.org/sites/default/files/publication/575626/ado2020.pdf>

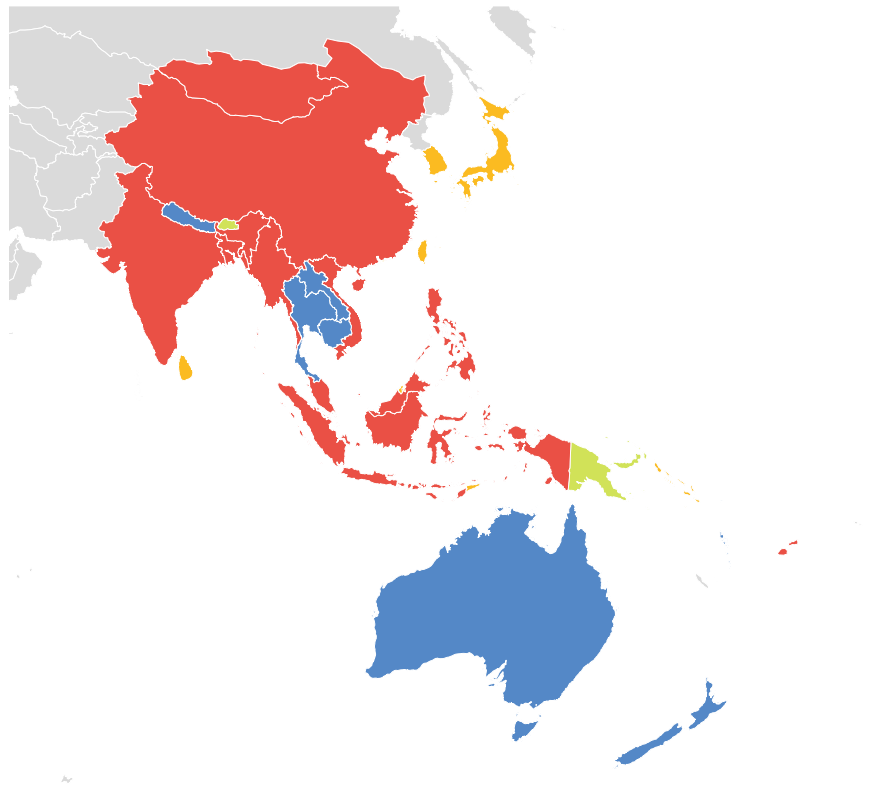
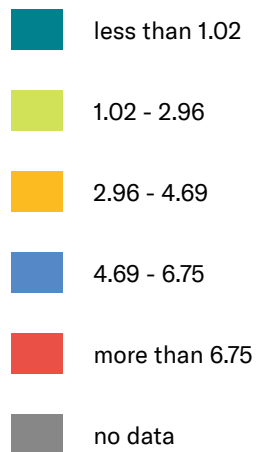
Asia: Real GDP Growth by Group



Real GDP Growth 2020, Percent



Real GDP Growth 2021, Percent



Source: International Monetary Fund <http://data.imf.org/?sk=ABFF6C02-73A8-475C-89CC-AD515033E662>

Post COVID-19 Legal and Tax Framework

As already mentioned, many pre COVID-19 developments will now accelerate, which will also effect the existing legal and tax framework. In the following, we outlined some of the potential implications that might affect your business in the Asia-Pacific region in the future.

GENERAL

- The rapid spread of COVID-19 required a fast national response. As a result, legislation enacted during this period might not be well-drafted, might be poorly implemented and might change over time, thus causing legal uncertainty to businesses in an already uncertain legal landscape in Asia-Pacific;
- The need to implement a fast national response to the health threat and the external origin of the threat might lead to a protectionist response from many governments and authorities in the region which might causes disadvantages for foreign investors; and
- The extensive use of digital solutions due to social distancing and travel restrictions will elevate legislation and taxation of digital services on the agenda of law-makers in most countries of the Asia-Pacific region.

LEGAL AND TAX

- Investment and Trade:
 - Potential changes in investment regulations on market entry with regard to COVID-19 in the light of the individual national interest of the respective country;
 - Changes in regulatory framework which might allow for public authorities to interfere with business operations due to national interest (export restrictions, nationalisation etc.);
 - Potential reviews of existing bi- or multilateral investment treaties to allow public authorities to respond to pandemics without potential claims of foreign investors;
 - Changes in tariff and non-tariff barriers might occur in response to COVID-19; and
 - Trade disputes might occur or light up about COVID-19 and its origins.

CORPORATE

- Legal and investment uncertainties might require a reorganisation of corporate structures and the use of holding companies;
- Increase in online corporate filing and maintenance of records via online platforms;
- Alternative arrangements for meetings (board of directors or shareholders meeting) by using IT tools;
- Potential challenges with regard to corporate documentation and form requirements in the absence of physical meetings;
- Potential changes in directors' liability in the light of COVID-19 measures, in particular with regard to governmental aid; and
- Piercing of the corporate veil in cases of non-compliance with COVID-19 measures.

COMMERCIAL

- General focus on the application of force majeure clauses and the doctrine of frustration in contracts;
- Flexible supply chains to reduce dependencies and loosen collaborations; issues with exclusive contractual relationships ; and
- Check whether supply chain arrangements contain back-up mechanisms.

EMPLOYMENT

- Working from home might be the new normal after COVID-19, and employers should adopt guidelines and policies to facilitate the same;
- The risk of mass unemployment might lead to stricter legislation on termination and retrenchment of employees;
- Employers who have received governmental aid during COVID-19 might face limitations when it comes to retrenchment exercises at a later stage; and
- Special arrangements for expatriates considering hardship caused by lockdowns etc.

COMPLIANCE

- Data protection and the question of what standards to adhere to might become relevant when we think about health data of employees, notification obligations to authorities or stakeholders and leaner business structures.

DISPUTE RESOLUTION

- Potential increase of litigation or arbitration as a result of defaults caused by COVID-19;
- Settlement agreements for commercial disputes and alternative dispute resolution such as mediation might become the preferred dispute resolution mechanism, as business might consider expenses, effort and the impact on long term business relations before initiating legal actions such as litigation or arbitration;
- Increase of employment-related disputes likely; and
- Increase of state-investor claims concerning governmental responses to COVID-19, such as lockdowns, export controls and travel restrictions likely.

TAX

- Travel restrictions may impact a business as well as an individual's tax residency;
- Employees working from home may unintentionally create a taxable presence or permanent establishment;
- Transfer pricing models may need to be adjusted in line with any changes in the supply chain as well as inadvertent changes to functions;
- Additional intercompany financing arrangements which may be considered could have tax implications;
- Tax implications (e.g. tax deductibility) of bad debt write offs; and
- Tax efficiency of streamlining business operations.

Possible approach for financial / corporate reorganization

Strategy	Key Drivers	Key Consideration	Look out for
REALIGNMENT CONSOLIDATION	<ul style="list-style-type: none"> - Simplification of group structure - Streamlining of shareholding structure - Capturing consolidated value - Consolidating operational capabilities - Pool resources and exploit synergies in business operations - Greater control over and focus on assets and operation 	<ul style="list-style-type: none"> - Eliminate hurdles on movement of funds between entities resulting in working capital blockage - Reduction in tax costs / leakage due to intra-company transactions - Effective cash repatriation of surplus funds - Reduction of multiple layer of entities causing regulatory challenges - Overall reduction of group level effective tax rates - Reducing administrative expenses and compliance burden - Projecting stronger valuation 	<ul style="list-style-type: none"> - Multiple entities within the group engaged in similar / complimentary businesses - Acquisition of target business for inorganic growth by the group - Several companies held by distinct shareholders within the group - Companies with huge cash balances - Companies with unabsorbed tax losses - Collapsing of redundant / multi-tier / investment holding company structures
HIVE-OFF DIVESTMENT	<ul style="list-style-type: none"> - Value Unlocking - Fund raising - Improving valuations - Alignment of structure with parent company - Management focus - Strategic partnerships and alliances - Segregate unrelated (non-strategic) business 	<ul style="list-style-type: none"> - De-linking high risk and potentially impacted businesses from core business - Safeguarding enterprise value as a whole - Create liquidity through monetising non-core business activity - Resolving rising debt level 	<ul style="list-style-type: none"> - Companies engaged in multiple business operations / activities - Companies anticipating investors for future M&A transactions - Companies involved in unrelated businesses and having huge debt
COMPANY FINANCIAL RESTRUCTURING	<ul style="list-style-type: none"> - Increasing dividend paying capacity - Reducing lost capital - Achieve optimal capital structure - Eliminate fictitious (non-operating) assets - Efficient use of un-distributed reserves 	<ul style="list-style-type: none"> - Elimination of past losses / fictitious assets thus reflecting the true financial position of the company - Create future distributable reserves - Removal of impede in accessing borrowed funds locally for expansion - Upstreaming of surplus cash due to lack of reserves - Enhancing stake by paying off / cancelling shares of other shareholders - Improving the key financial ratios of the companies 	<ul style="list-style-type: none"> - Highly capitalised companies with unabsorbed past losses / insignificant assets - Inability of company to repay the existing group company debts / payables - Companies looking to buy-out minority shareholder / existing shareholder

CURRENT SITUATION

With respect to the COVID-19 outbreak, on 20 January 2020 the Joint Prevention and Control Mechanism of the State Council was established. It works as a platform for the multi-ministerial coordination mechanism initiated by the central government and is led by the National Health Commission. Its main tasks are epidemic prevention and control, medical treatment, scientific research, foreign affairs, logistics support and forward work. China has taken a variety of measures to stem the outbreak, including lockdowns, segregation and quarantine for suspected and confirmed cases, contact tracing and close observation and other preventive measures for those in close contact with confirmed / suspected cases, stoppage of work, closure of businesses, schools, places or areas etc. Due to a rising number of imported COVID-19 cases, China has furthermore temporarily suspended the entry into China for almost all foreigners. In order to mitigate the economic consequences, various facilitations for companies have been introduced, for example in terms of social security.

PERSPECTIVE DURING COVID-19

Apart of some clusters where new infections have occurred due to cross-border travel (returning Chinese nationals), the number of new infections in the country is low. However, residents are still obliged to download a coloured health code after reporting of certain information, such as ID card, address, health status, contact history and residence history. Without such health code, people might be banned from entering public places or transport etc. Further, the health code is necessary to resume work. In order to boost the economy and consumption, China is relaxing its domestic travel restrictions. However, different control measures may still exist at provincial as well as at local levels. Such measures still include the suspension of operation for cinemas, nature parks and other places where larger crowds of people may meet. It is also expected that international travel restrictions will be relaxed in the near future, in particular to allow foreign managers and employees to return. Taking into account the need to resume production and to avoid further economic damage as well as to prevent a new outbreak of the disease, a further opening and lifting of measures may be expected.

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PERSPECTIVE AFTER COVID-19

The outbreak of COVID-19 and its impact, especially on supply chains, has incurred many critical voices as to whether various productions should be relocated back to the home country. However, such a shift back, if at all, is likely to be very time consuming and will take many years. It should also be noted that China will no longer be the “workbench” of the world in the long term, but will gain even greater importance as a sales market due to increasing prosperity. The adoption of new laws and an increasingly independent judiciary enhances legal certainty in the country.

Rödl & Partner China advises and supports more than 500 European based companies in setting up and structuring their investments in China since 1990. With our experienced team (German and local experts at all locations) we can be your one-stop-shop for all matters related to advisory on financial, legal and tax matters related to the consolidation or restructuring of investments in China. We have implemented such restructuring exercises for numerous clients in the past.

BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* <small>*referring to the most common legal form of Limited Liability Companies</small>	In China it is not possible to put companies dormant. In principle, companies must pursue their registered business purposes. Companies that fail to submit annual operation reports or tax declarations may have their business licenses revoked.
Nominee directorship	Generally, a company must have a board of directors (comprising 3 – 13 members). Companies with relatively few shareholders or a relatively small size may have an executive director. Directors can be foreign and are not required to reside in China. Nominee directors are generally not allowed.
Incorporation of holding Company	A holding company can be incorporated in the form of an Investment Holding Company which is a limited liability company with specific requirements regarding its capital requirements as well as its shareholder. After establishment of the holding company, an application for recognition as regional headquarters can be filed.
Share Transfer	Share transfers are generally possible. In the event that a foreign investor intends to take over a domestic entity, the business of the domestic Company may not be restricted to foreign investment (which is governed by the so-called negative list). Share transfers are subject to filing and registration requirements.
Corporate conversion	Generally not possible, except for the case where a private company (e.g. a limited liability company) is converted to a company limited by shares.
Cross-border conversion regime	Not possible under Chinese laws.
Insolvency proceedings	Under the condition that a Company fails to clear off its debt as due, and if its assets are not enough to pay off all the debts or if it is obviously incapable of clearing off its debts, the Company may file an application with the people's court for restructuring, compromise or bankruptcy liquidation.
Cross-border insolvency regime	China is not a signatory of the UNICITRAL model law on cross-border insolvency. Further, Chinese courts normally do neither recognise nor enforce foreign rulings or judgements on bankruptcy.

Liquidation	<p>A Company can be dissolved and liquidated in the following cases:</p> <ul style="list-style-type: none"> - Voluntarily initiated by a respective shareholder resolution - Mandatorily if the term of duration of the Company has expired, dissolution is required by merger or division of the Company, the business license is revoked, or the Company is ordered to close down; - Bankruptcy liquidation.
General tax implications for corporate conversions	<ol style="list-style-type: none"> 1. Usually capital gains tax may trigger, can be deferred when certain criteria are met; 2. Loss carried forward and deductible VAT input might be utilised under special tax treatment of merger case; 3. Tax treaty can be applied for capital gains tax exemption when certain criteria are met; 4. Indirect share transfer of a company may under certain circumstances trigger Chinese capital gains tax (e.g. the foreign grandparent company of a company incorporated in China transfers the shares into the intermediate foreign parent company).
Adjustments of work arrangements	<p>Alternative work solutions are possible if the employer encounters economic difficulties in business operations or production due to the COVID-19 outbreak. Such solutions may be the implementation of the following flexible work arrangements:</p> <ul style="list-style-type: none"> - Adjustment of salaries - Rotation of work shifts - Short-time work <p>Before implementation of such measures, the employer must consult with the respective employee, all staff, trade union or other employees' representatives.</p>
Retrenchment	<p>Possible under certain conditions, in particular if there is a major change in objective economic conditions.</p>
Mandatory compensation in case of termination of commercial agencies or distribution agreements	<p>Unlawful termination of a contract may constitute a breach of contract and lead to a right to compensation. Further, compensation might be based on the agreement itself.</p>
Assignments of contracts	<p>Assignments and novation of contracts are possibly subject to the respective commercial contract. However, the assignment of domestic contractual rights and obligations to overseas is not possible in general due to the strict Chinese foreign exchange control.</p>
Transfer of assets overseas	<p>It is possible to transfer tangible assets, such as movable and immovable property excluding land as well as intangible property (IP rights etc.) to a foreign entity.</p>

CURRENT SITUATION

Hong Kong has responded early to the threat of COVID-19 with social distancing, contact tracing, quarantine measures and travel restrictions. As a result of high numbers of infections, the government of Hong Kong implemented a partial lockdown at the end of January 2020, which was partially eased on 8 May 2020. Several measures will remain in place after the lockdown to maintain a low number of infections. To cushion the economic effects, the government has introduced several stimulus packages.

PERSPECTIVE DURING COVID-19

Assuming that the infection numbers continue to be low, the Hong Kong government is likely to balance the need to re-open up against health security concerns to avoid another outbreak. Given its role as an aviation hub, it is likely that Hong Kong will lift travel restrictions as soon as a certain degree of safety can be provided. As an advanced economy in the region, Hong Kong might function as a safe haven for business in Asia-Pacific.

PERSPECTIVE AFTER COVID-19

For many foreign investors, Hong Kong is the preferred hub and jurisdiction of choice in the Asia-Pacific region. Despite its current political situation, Hong Kong is an environment with a robust enforcement of laws, world-class infrastructure and a high level of education compared to other countries in the region, so it is very likely that Hong Kong will continue to be one of the preferred hubs for Asia-Pacific in the future. Furthermore, Hong Kong is a leading center for dispute resolution, which might further support Hong Kong's central role in the region after COVID-19.

Rödl & Partner in Hong Kong can be your coordinator and one-stop-shop in the Asia-Pacific region. As many companies are using Hong Kong as hub and holding location for their business in Asia-Pacific and particularly in China, Rödl & Partner in Hong Kong can support you upon your consolidation or restructuring exercise in the Asia-Pacific region. We have coordinated cross-border tax and legal assessments and subsequently implemented such restructuring exercises for numerous clients in the past.

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[Rödl & Partner China](#)

BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* *referring to the most common legal form of Limited Liability Companies	A Company can be set dormant in order to reduce compliance requirements and costs.
Nominee directorship	A minimum of one individual director and unlimited maximum number of directors allowed. The director can be of any nationality and need not be resident in Hong Kong. It is possible to utilise nominee directorships.
Incorporation of holding Company	In general, incorporations of Companies are relatively easy and fast in Hong Kong. If it is required, that the holding company has been incorporated for a certain period of time, it is possible to purchase an existing dormant Company (Shelf Company).
Share Transfer	Share transfers are relatively easy and fast in Hong Kong as in most cases there are no investment registration, approval or licensing regimes to adhere to.
Corporate conversion	The following corporate conversions are governed under the law: <ul style="list-style-type: none"> - Amalgamation - Change of legal form (for example Sole Proprietorship Company to PLC)
Cross-border conversion regime	Cross-border amalgamation is not viable in HK, thus the transaction would generally be regarded as business transfer pursuant to liquidation.
Insolvency proceedings	Schemes of arrangement and receivership are available alternatives which may lead to return into solvency. Unlike under English law, there is no administrative receivership under Hong Kong law.
Cross-border insolvency regime	Although Hong Kong and China have not adopted the UNICITRAL model law in cross-border insolvency, there are developments that indicate positive steps for increased recognition of foreign insolvency proceedings. In early 2019, the government introduced a mutual recognition regime with China for civil and commercial judgments – insolvency matters were specifically excluded. Notwithstanding the foregoing, landmark cases such as Re Supreme Tycoon Limited (08/02/2018, HCMP833/2017) confirms the Hong Kong court's willingness to assist foreign liquidators in creditors' voluntary liquidations, provided the insolvency regime of the foreign jurisdiction is similar to that of Hong Kong.
Liquidation	<ol style="list-style-type: none"> 1. Striking off: A Company can be struck off from the registry if inter alia it has never commenced business or has ceased business for 3 months and has no liabilities. In general, this is the most common procedure and faster than a winding up. 2. Winding up: A company may be wound up by the court or voluntarily. Voluntary winding-up consists of: <ul style="list-style-type: none"> - members' (shareholders') voluntary winding-up; and - creditors' voluntary winding-up. Compulsory winding-up by the High Court of the Hong Kong Special Administrative Region.
General tax implications for corporate conversions	<ul style="list-style-type: none"> - No capital gains tax; - Very low stamp duty on share transfer; and - Tax frameworks / schemes for certain corporate conversions available.

Adjustments of work arrangements	It is possible to adjust work arrangements with or without salary cuts, subject to the consent of union or employee.
Retrenchment	It is possible to carry out retrenchment exercises.
Mandatory compensation in case of termination of commercial agencies or distribution agreements	No statutory compensation. However, compensation might be based on the agreement.
Assignments of contracts	Assignments and novation of contracts possible subject to the respective commercial contract.
Transfer of assets overseas	It is possible to transfer tangible assets, such as movable and immovable property as well as intangible property (IP rights etc.) to a foreign entity.

CURRENT SITUATION

India, a country of 1.3 billion people, has done remarkably well in managing and containing cases of COVID-19 much below the global incidence rate. The Indian government has taken several proactive and pre-emptive measures which ensured that India stayed ahead of the curve as the crisis evolved. By mid-March, the Indian government announced a total lockdown which has been maintained until the end of May 2020. This nationwide lockdown was unprecedented. The Indian government issued various guidelines, and a detailed protocol was established to ensure and manage the working of the industries and the supplies of essentials during the lockdown. To kick-start the industrial activity by boosting the Micro, Small and Medium Enterprises (MSME) industry, the Indian government has introduced an economic stimulus package aggregating to 10 percent of the country's GDP.

PERSPECTIVE DURING COVID-19

During the lockdown, the government accelerated its efforts for an effective management, with strategies and various relief packages being rolled out to alleviate the situation of the poor and vulnerable, farmers and laborers, including insurance for more than two hundred thousand healthcare workers. The Indian government further introduced changes to the foreign direct investment ('FDI') regulations to strictly monitor the foreign investments from its neighbouring countries, particularly from China based companies, during the COVID-19 pandemic.

PERSPECTIVE AFTER COVID-19

The Indian government with its flagship campaign "Make in India" has been working with an intention to boost the domestic manufacturing industry and to attract foreign investors into India. India has established a list of ten mega clusters across nine states as most attractive destinations for companies to settle, based on sectoral requirements. To further attract companies to set up new manufacturing facilities, the corporate tax rate has been reduced to 15 percent. To promote and localise defence production, the government has raised the FDI cap from 49 percent to 74 percent via the automatic route. Given the political stability in India and the strong focus on the Make In India policy, it is quite clear that India will continue its efforts to further enhance its manufacturing capabilities in the future.

Rödl & Partner India has advised and supported more than 300 European based companies in setting up and structuring their investments in India. Our experienced team is ready to be your one-stop-shop for full advisory services on financial, legal and tax matters related to the consolidation or restructuring of your investment in India. We have implemented such restructuring exercises for numerous clients in the past.

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BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* <small>*referring to the most common legal form of Limited Liability Companies</small>	<p>An Indian Company can be put dormant in order to reduce compliance requirements and costs.</p>
Nominee directorship	<p>Every Indian Company must have one director who is locally resident in India. It is possible to utilise nominee directorships to comply with this requirement.</p>
Incorporation of holding Company	<p>In general, incorporation of an Indian Company having foreign investment is not a simple process due to complex documentation and legalisation requirements. If required, in order to save time, it is possible to purchase an existing Company (Shelf Company).</p>
Share Transfer	<p>Share transfers in India are moderately easy and simple. In general, there are no approvals required, however, pricing guidelines issued by the government under the Foreign Exchange Management Act ('FEMA'), regulations and specific pricing guidelines as provided under the income-tax regulations are required to be followed. Further, necessary reporting to be done to the Reserve Bank of India ('RBI').</p>
Corporate conversion	<p>The following corporate conversions are governed under the corporate laws in India:</p> <ul style="list-style-type: none"> - Amalgamation - Demerger - Slump Sale (Business transfer as lock-stock-barrel) - Asset Sale - Change of legal form (for example Indian Company to Limited Liability Partnership ('Indian LLP') and vice versa]
Cross-border conversion regime	<p>Cross-border merger is permitted in India.</p> <p>The Companies Rules in India require a prior approval from the RBI in case of cross-border mergers. However, the Merger Regulations notified by RBI have a deeming provision stating that any cross-border merger in compliance with the Merger Regulations shall be deemed to have been approved by the RBI without any separate approval required. Any cross-border merger not in compliance with the Merger Regulations would require prior RBI approval.</p>
Insolvency proceedings	<p>The insolvency resolution process may be initiated by either the debtor, the creditors or the Company. Currently, in wake of the COVID-19 situation, fresh initiation of insolvency proceedings are suspended for a period of one year, and the threshold limit for triggering an insolvency proceeding has been increased to INR 10 million from INR 0.1 million.</p> <p>Schemes of arrangement, receivership and judicial management are available alternatives which may lead to return into solvency.</p>
Cross-border insolvency regime	<p>UNICITRAL model law in cross-border insolvency is not recognised in India. The absence of recognition of cross border insolvency laws in India creates a situation where the Insolvency and Bankruptcy Code 2016 and its revival plans (moratorium granted under the code) are less effective.</p>
Liquidation	<ol style="list-style-type: none"> 1. Striking off: An Indian Company can be struck off from the registry if inter alia it has no assets and no liabilities and has not been in operation for more than 2 years. In such scenarios this may be easier and faster than a winding up. 2. Winding up: Different forms of winding-up of Indian Companies: <ul style="list-style-type: none"> - Voluntary winding-up (initiated by the shareholders) - Mandatory winding-up

General tax implications for corporate conversions	<ol style="list-style-type: none"> 1. CORPORATE RESTRUCTURING / CONVERSION – DOMESTIC <ul style="list-style-type: none"> – Merger / Demerger of Indian Companies – These transfers are generally tax neutral for Indian Companies as well as its shareholders, provided the applicable conditions are fulfilled; – Conversion of Indian Company to Indian LLP or vice versa – Such conversions are generally not subject to capital gains tax for the Indian Company / LLP and its shareholders / partners, subject to satisfaction of applicable conditions. 2. CORPORATE RESTRUCTURING – GLOBAL <ul style="list-style-type: none"> – Merger / Demerger of foreign companies with Indian Companies – These transfers are generally tax exempt in India, subject to certain conditions being met. – Merger / Demerger of Indian Companies with foreign companies – Such transfers are subject to tax in India, as there are no specific tax exemptions available; – Merger / Demerger between foreign companies resulting in direct / indirect transfer of shares of Indian Companies – These transfers are subject to tax in India. However, such transfers would be exempt from tax in India, provided the applicable condition are met; – Transfer of shares of foreign companies resulting in indirect transfer of shares of Indian Companies – Such indirect transfers of shares of Indian Companies shall be liable to tax in India, subject to treaty benefits, if any, for the foreign shareholder. 3. CAPITAL RESTRUCTURING <ul style="list-style-type: none"> – Dividend – Dividend paid by Indian Companies to foreign shareholders is subject to withholding tax in India at 20 percent (plus applicable surcharge and cess). However, such withholding taxes may be reduced, subject to availability of treaty benefits, if any. – Buyback – Buyback of shares by Indian Companies is subject to buyback distribution tax by the Indian Companies at 20 percent (plus applicable surcharge and cess). However, shareholders are not liable to tax in India on the consideration received on buyback of shares. – Capital Reduction – Any amount paid by the Indian Company to its shareholders on capital reduction is liable to deemed dividend distribution withholding tax at 20 percent (plus applicable surcharge and cess), subject to treaty benefits, to the extent of the Indian Company possessing accumulated profits. The excess amount received by the shareholder over the amount considered as deemed dividend shall be liable to capital gains tax in India after reducing the cost incurred for purchasing those shares.
Adjustments of work arrangements	<p>It is possible to adjust work arrangements with or without salary cuts, subject to:</p> <ul style="list-style-type: none"> – Consent of union or employee – Notification to authorities
Retrenchment	<p>It is possible to carry out retrenchment exercises, subject to:</p> <ul style="list-style-type: none"> – Notification to workforce – Notification to authorities
Mandatory compensation in case of termination of commercial agencies or distribution agreements	<p>No statutory compensation. However, compensation might be based on the agreement.</p>
Assignments of contracts	<p>Assignments and novation of contracts possible subject to the respective commercial contract.</p>
Transfer of assets overseas	<p>It is possible to transfer tangible assets, such as movable and immovable property as well as intangible property (IP rights etc.) to a foreign company.</p>

CURRENT SITUATION

Before the first two cases of COVID-19 were confirmed in Indonesia in early March, the government's response to the risk of spreading was relatively lax, resulting in a lag of mass testing and contact tracing. However, testing capacities have been improving since April. Major cities see a huge decline of traffic and public crowds due to social and travel restrictions, although the month of Ramadan has posed a tough challenge for many Indonesians longing for prayer gatherings and family visits, while demands for essential goods have soared. Managing the anticipated influx of people attempting to return to the Greater Jakarta area post-Ramadan was therefore one of the government's recent priorities, as regulations to partially close down the city borders were put in place on 14 May 2020.

PERSPECTIVE DURING COVID-19

The curve is yet to see any flattening as of the end of May 2020, despite Indonesia's ongoing efforts to strengthen the enforcement of existing measures and to improve its health facilities. With a dense population of approx. 260 million and a developing economy, it is evident that tackling COVID-19 is incredibly challenging for the Indonesian government, especially after the unfortunate delay of response at the early stage of the pandemic.

PERSPECTIVE AFTER COVID-19

To avoid further economic crisis scenarios, Indonesia is beginning to examine the possibility of gradually reopening businesses and public facilities in mid-2020, and sustainable potential 'new normal' measures to be implemented in the society, while remaining vigilant to the remaining health risks. Balancing the efforts in curbing the virus spread and economic security appears to be the government's focus, as major adjustments in public interactions, businesses, and government services are expected to be seen throughout Indonesia.

Rödl & Partner Indonesia has assisted many German and other European based entities from a broad range of industries in establishing, structuring and managing their business in Indonesia with a strong presence in investment and legal advisory (in close cooperation with a local law firm), tax, business process outsourcing and assurance services. With the collaboration of our experienced team in each practice group, Rödl & Partner will continue to assist businesses in navigating through the challenging business environment in Indonesia amidst the country's perseverance in adapting to the 'new normal'.

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BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* *referring to PT PMA	No specific procedure to formally change a company's status to become dormant from a legal perspective. Practically, it is possible for companies to suspend operations, provided that all tax reporting and corporate compliance measures continue to be performed.
Nominee directorship	Nominee arrangements of directorship are common practice, despite not being recognised in the Company Law. Directors who assume their position from any nominee arrangement will simply be recognised as a director with all duties and obligations stipulated in the Company Law as well as the articles of association of the company.
Incorporation of holding Company	Incorporating companies in Indonesia follows a general practice, no specific stipulation for the establishment of a holding company. Companies are usually established as a holding company when acquiring another company as subsidiary.
Share Transfer	Share transfers may be conducted with a transfer agreement in form of a notarial deed, or privately made. Transfers that constitute acquisitions from shareholders shall be conducted with a transfer agreement made in form of a notarial deed, and further established with a notarial deed of acquisition.
Corporate conversion	<p>Corporate conversion with regard to the transfer of business and shares:</p> <ul style="list-style-type: none"> - Merger - Acquisition - Consolidation - Spin-off <p>With regards to its legal form, foreign entities may only be established in the form of a limited liability company (PT PMA) or a representative office. The change of legal form from PT PMA to representative office and vice versa is not possible without liquidating / closing the previous form first.</p> <p>Some business sectors limit foreign ownership to certain percentages, and some are even entirely closed for foreign investments, subject to the Negative List under the Investment Law.</p> <p>Further, there is a required minimum value of total investment of IDR 10 billion (excl. land and building) and paid-up capital of IDR 2.5 billion to establish or convert into a PT PMA.</p>
Cross-border conversion regime	Cross-border acquisition is possible, while cross-border merger is not recognised under the Indonesian Company Law.
Insolvency proceedings	<p>Under Indonesian law, the term 'insolvency' is used to define the condition where a debtor is unable to pay their debts due to insufficient assets.</p> <p>Proceedings shall be commenced when the debtor themselves or one (or more) of their creditor(s) formally request the court to declare the debtor to be bankrupt, per the conditions stipulated in the Bankruptcy Law. The requirements for a company to be declared bankrupt by the court are:</p> <ul style="list-style-type: none"> - the company must have at least 2 creditors; and - it cannot fully pay at least 1 of its due and payable obligations.
Cross-border insolvency regime	No law and / or regulation has been issued on cross-border insolvency (CBI). The 1997 UNCITRAL Model Law on CBI has not yet been adopted in Indonesia.

Liquidation	<p>Liquidation is performed either due to the shareholders' resolution, bankruptcy, a court order, or a revocation of business license.</p> <p>The dissolution of a company shall not yet terminate its status as a legal entity up until liquidation is completed and approved by the shareholders or the court.</p>
General tax implications for corporate conversions	<ul style="list-style-type: none"> - Transfer of assets in the context of M&A, consolidation, or spin-off shall not be deemed as taxable and is not subject to VAT, with the requirement that the parties have qualified as Taxable Entrepreneurs (PKP) - Capital gains related to corporate restructuring is subject to 22 percent income tax - Transfer of land and / or building is subject to 2.5 percent final income tax - Acquisition of land and / or building is subject to 5 percent tax
Adjustments of work arrangements	<p>Adjustments of work arrangements are possible, subject to negotiation and agreement between the company and the employees. For the payment of religious holiday allowance in particular, suspension or reduction may be applied upon the agreement between the company and the employees and notification to authorities.</p>
Retrenchment	<p>Any termination of employees shall be carried out in accordance with the Manpower Law and its implementation regulations, including mass terminations for cost-efficiency reason.</p>
Mandatory compensation in case of termination of commercial agencies or distribution agreements	<p>In the event of default, the Indonesian Civil Code generally stipulates that parties may request a termination of agreement with reimbursements, compensation, and / or interests, if they see that the breached obligation cannot be fulfilled. This provision can be altered and agreed otherwise by the contracting parties.</p> <p>For distribution agreements in particular, companies must achieve a "clean break" with terminated distributors before appointing a new one, if the agreement is terminated before the Certificate of Registration expires.</p>
Assignments of contracts	<p>Assignments of contracts or novation is possible in accordance with the Indonesian Civil Code, subject to the stipulation agreed by the contracting parties.</p>
Transfer of assets overseas	<p>Transfer of assets overseas is possible through the usual sale and purchase agreements.</p>

CURRENT SITUATION

After an initial delay, Malaysia has responded to the COVID-19 challenge with a movement control order (MCO) which started on 18 March 2020. The MCO amounted to a partial lockdown and required all but the most essential businesses and public services to close down. Following the MCO, some relaxations were implemented in the form of a Conditional MCO (CMCO) and the Recovery MCO (RMCO), which will last until the end of August 2020. Most businesses are allowed to open subject to preventive Standard Operating Procedures. Additionally, measures such as contact tracing, quarantine and entry / exit restrictions remain in place.

PERSPECTIVE DURING COVID-19

As the Malaysian economy suffered substantial loss of revenue during the MCO, the government currently has to balance the requirements of the economy against the necessities of infection control. As during the CMCO the economy slowly returned to a new normality, the government is supporting individuals affected by job losses and SMEs through three stimulus packages amounting to one fifth of the national GDP. Additionally, the Malaysian central bank (BNM) implemented a number of measures to ease the burden of individuals and companies suffering from the burden of financings.

PERSPECTIVE AFTER COVID-19

Due to an investment friendly and reliable legal, administrative and taxation environment, Malaysia has been one of the preferred locations for FDI related to manufacturing and services. Malaysia is also likely to be one of the countries being able to manage the COVID-19 pandemic in the future thanks to a government which is not denying the existence of the problem and prepared to act decisively, a relatively young population and a comparatively well-developed private and public medical sector. Finally, Malaysia may profit from the desire of many countries and businesses to diversify their supply chains away from a single supplier model. With its young English-speaking population and many MNCs already invested in the country, Malaysia may offer an alternative destination for a number of sectors and industries. In addition, the local M&A market may offer interesting opportunities for the well prepared buyer, as companies may struggle with cash-flows.

With our focus on advising foreign SMEs on all aspects of their investments in Malaysia, Rödl & Partner Malaysia is uniquely placed to provide a holistic approach to all consultancy requirements of a potential investor. We have considerable expertise on local and regional tax structuring, M&A and restructuring advisory, incentives, regulatory and compliance matters.

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BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* *referring to Sendirian Berhad or Sdn Bhd (Private Limited Company)	A Company may change its status to dormant, however it will still have to file its Annual Return, Annual Financial Statements and Tax Return.
Nominee directorship	Every Company must have at least one director who is locally resident in Malaysia. It is possible to utilise nominee directorships to comply with this requirement.
Incorporation of holding Company	In general, incorporations of holding or subsidiary companies are relatively easy and fast in Malaysia. If all documents are available, the process can be finalised within one week.
Share Transfer	<p>Share transfers may be conducted with a transfer agreement in form of a notarial deed, or privately made.</p> <p>Transfers that constitute acquisitions from shareholders shall be conducted with a transfer agreement made in form of a notarial deed, and further established with a notarial deed of acquisition.</p>
Corporate conversion	<p>The following corporate conversions are possible in Malaysia:</p> <ul style="list-style-type: none"> - Change of status (e.g. from Berhad (public company) to Sendirian Berhad, or vice versa; from Syarikat Tidak Berhad (unlimited company) to Sendirian Berhad - Change of legal form (e.g. from Sendirian Berhad to Perkongsian Liabiliti Terhad (limited liability partnership).
Cross-border conversion regime	Cross-border conversions or mergers are not possible.
Insolvency proceedings	<p>There are various schemes available to rescue companies in financial difficulties:</p> <ul style="list-style-type: none"> - Corporate rescue mechanism, - schemes of arrangement, - receivership arrangement, - corporate voluntary arrangement, and - judicial management.
Cross-border insolvency regime	Only in cases in which a foreign company carries out its business in Malaysia and is subject to insolvency or liquidation proceedings in the place of incorporation.
Liquidation	<ol style="list-style-type: none"> 1. Striking off: A Company can be struck off from the registry if it has no assets and no liabilities. In general this is easier and faster than a winding-up process. 2. Winding up: <ul style="list-style-type: none"> - Voluntary winding-up (initiated by the shareholders) - Mandatory winding-up (initiated by creditor / court)
General tax implications for corporate conversions	<ol style="list-style-type: none"> 1. No capital gains tax; 2. Stamp duty on instrument of transfer; 3. Generally no tax deduction on transaction costs during M&A transactions; 4. Interest is generally tax deductible. However, deduction on intercompany interest may be restricted; 5. Tax frameworks / schemes for certain corporate conversions available.

Adjustments of work arrangements	It is possible to adjust work arrangements with or without salary cuts, subject to the consent of the employee or without a consent in a retrenchment situation.
Retrenchment	<p>Companies may carry out retrenchment exercises, if they can show that:</p> <ul style="list-style-type: none"> – their operations are subject to a surplus of labour; or – the company is in financial distress. <p>Redundancy and termination should be the last resort, if measures such as working time reductions, unpaid leave, salary cuts are not effective. All measures have to be objectively fair; this applies in particular to the selection of employees for redundancy.</p> <p>All retrenchment exercises have to be reported to the local Labour Office. Redundancy termination is subject to compulsory compensation payments for employees earning less than 2,000 MYR per month and certain other blue collar employees.</p>
Mandatory compensation in case of termination of commercial agencies or distribution agreements	No statutory compensation. However, compensation might be based on the agreement.
Assignments of contracts	Assignments of the benefit of an agreement and novation of an agreement are possibly subject to the terms of the agreement and the consent of the Assignee in the case of an Assignment and to the consent of the old and new party in the case of a novation.
Transfer of assets overseas	It is possible to transfer tangible assets, such as movable and immovable property as well as intangible property (IP rights etc.) to a foreign entity. There are some restrictions in respect of real estate depending on the location and type (residential, commercial, industrial etc.) of the property in question.

CURRENT SITUATION

Myanmar implemented an array of protective measures even before the first case of COVID-19 in Myanmar was confirmed. Once the virus officially arrived, the government contained the spread by cancelling the Thingyan holiday festivities and travels. Subsequently, a curfew and a Work From Home-policy were implemented. Gatherings of more than 4 people became restricted. As a result, Myanmar successfully avoided a major outbreak of COVID-19. In order to support the economy, the government has released a comprehensive economic relief plan focusing on various sectors and containing multiple measures by numerous government institutions and agencies. As the number of confirmed cases has remained very low, the government commenced with the relaxation of certain measurements.

PERSPECTIVE DURING COVID-19

Businesses intending to resume operations are required to apply for re-opening approval from the local administration, and have to follow the official guidelines published by the Ministry of Health and Sports. The social distancing guidelines as well as all other restrictions are currently being reviewed every two weeks. Most factories and food production have resumed their operations at the beginning of May. Restaurants may resume operations under the specific conditions set by the Ministry of Health and Sports. Should the situation remain stable, we will see further relaxations of the restrictions.

PERSPECTIVE AFTER COVID-19

Myanmar has made a significant progress with regard to economic and legal reforms. The recent opening of the finance and insurance sector, trading and education pave the way for future foreign investments. Even the nascent stock exchange opened up for foreign investors despite the pandemic in March 2020. Massive infrastructure projects are entering the implementation stage, and the government seems committed to further reforms. Hopefully, the swift implementation of the COVID-19 economic relief plan will cushion the impact. However, despite the huge inevitable impact Myanmar's economy is one of the few economies worldwide still forecasted to grow in 2020.

Rödl & Partner in Myanmar can be your coordinator and one-stop-shop for any tax, legal or accounting topics relating to consolidation or restructuring your presence in Myanmar.

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BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* *referring to Private Companies Limited by Shares	The Myanmar Companies Law has no provision to put a company dormant, basic compliance requirements and costs remain.
Nominee directorship	Every Company must have one director who is locally resident in Myanmar. It is possible to utilise nominee directorships to comply with this requirement.
Incorporation of holding Company	In general, incorporations of Companies are relatively easy and fast in Myanmar under the new Myanmar Companies Law which was implemented in 2018.
Share Transfer	Share transfers are relatively easy and fast in Myanmar. But a stamp duty applies, and the agreement must be submitted for assessment. Also, the threshold of the differentiation between local and foreign company must be observed as this may have an impact on licenses.
Corporate conversion	The Myanmar Companies Law allows for a change of legal form (a company limited by guarantee may change to a public or a private company)
Cross-border conversion regime	Myanmar does not permit a cross-border merger.
Insolvency proceedings	The Myanmar Insolvency Law was implemented in 2020 and offers provisions of corporate rescue and rehabilitation as well as winding up.
Cross-border insolvency regime	Myanmar has adopted the UNICITRAL model law in cross-border insolvency on 14 February 2020 incorporated in the new Myanmar Insolvency Law. However, other than the remaining law and rules relating to insolvency, the part relating to cross-border insolvency has not been implemented yet.
Liquidation	<ol style="list-style-type: none"> 1. Striking off: A Company can be struck off from the registry at the Company Registrar's discretion. 2. Winding up: Different forms of winding-up of Companies: <ul style="list-style-type: none"> - Voluntary winding-up (initiated by the shareholders) - Mandatory winding-up (initiated by the courts)
General tax implications for corporate conversions	Capital gains tax on share transfers
Adjustments of work arrangements	<p>It is possible to adjust work arrangements with or without salary cuts, subject to</p> <ul style="list-style-type: none"> - Consent of union or employee; and - Notification to authorities
Retrenchment	<p>It is possible to carry out retrenchment exercises, subject to:</p> <ul style="list-style-type: none"> - Consent of union or employee; and - Notification to authorities

Mandatory compensation in case of termination of commercial agencies or distribution agreements	No statutory compensation. However, compensation might be based on the agreement.
Assignments of contracts	Assignments and novation of contracts possible subject to the respective commercial contract.
Transfer of assets overseas	It is possible to transfer tangible assets, such as movable property to a foreign entity. It is not possible to transfer immoveable property to a foreign entity. While new IP laws following international model laws have been passed by parliament in 2019, the implementation is still pending and Myanmar has so far not joined the international conventions. The legal feasibility of a transfer of any IP right must be determined on a case-to-case basis under the currently applicable regulations.

CURRENT SITUATION

The Philippines faces one of the longest and strictest COVID-19 social distancing and quarantine measures in Asia. Starting from 16 March 2020, Metro Manila and other parts of the Philippines were placed under an Enhanced Community Quarantine (ECQ) until 14 May 2020. Starting from 15 May 2020, the government's Inter Agency Task Force (IATF) implemented a scheme within which, based on confirmed case numbers and other assessment criteria, specific locations may transition from the initial ECQ to a Modified Enhanced Community Quarantine (MECQ) or General Community Quarantine (GCQ) before the quarantine measures are lifted. Under MECQ, the main principle of "100 percent stay at home" still applies. However, many industries are allowed to re-open their offices under strict health and social distancing guidelines. Under the GCQ, most businesses are allowed to operate outside their home-offices. Only certain entertainment, fitness, personal care, cultural and tourist industries have to remain closed. Public transport is available again, based on strict safe distancing protocols. Smaller gatherings of a maximum of 10 people are permitted, and only high risk groups should continue to stay at home.

PERSPECTIVE DURING COVID-19

The quarantine measures hit the Philippine economy and the Filipinos hard. However, inter alia due to community support and private (corporate) initiatives, the Filipinos dealt fairly well with the challenging circumstances and were able to keep the pandemic outbreak in check until date. The COVID-crisis also sparked many positive developments. New business models evolved. Particularly a (still) greatly paper driven economy and bureaucracy digitalised in lightning speed. Government hurdles on liberalisation, incentives and particularly corporate taxes that could not be overcome months ago, suddenly seem to lower or disappear in the spirit of the main law related to COVID-19 "Bayanihan to Heal as One Act".

PERSPECTIVE AFTER COVID-19

Despite the strict Quarantine measures and the 857 deaths of confirmed cases (as of 22 May 2020), the Philippine spirit and resilience remained strong. Being used to challenging situations, the country has proven many times that at every occasion, it emerges strongly from such setbacks. In addition, and compared to other countries, the Filipinos for several reasons sailed relatively smoothly during stormy waters like the Asian financial crisis, SARS and the global financial crisis. Based on the Philippines resilience, its experiences from the past, one of the most stable and high economic growth rates in the region, the socio-economic fundamentals that propelled the Philippines to the 2nd or 3rd fastest growing economy in ASEAN, a low public debt ratio, significant national resources and foreign financial reserves, the country remains competitive compared to its neighbouring countries and beyond. Particularly when in the "New Normal", diversification for business continuity, China+1 and working from remote offices will gain importance. Prior to the outbreak, the Philippine BPO / KPO sector already ranked amongst the leading countries in the world – and despite a hard COVID-lockdown has shown to remain mostly operational.



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BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* *referring to Corporations	A Corporation can be placed dormant in order to reduce compliance requirements and costs.
Nominee directorship	Every Corporation must have at least two (2) directors, unless the specific regulations for a “One Person Corporation” (OPC) may apply. It is possible to utilise nominee directorships to comply with this requirement.
Incorporation of holding Company	The incorporation of a holding Corporation will substantially be subject to the same requirements as any other type of Corporation (e.g. the Revised Corporation Code and Foreign Investment Act) Its incorporation and post-registration may take approximately 1 to 8 weeks.
Share Transfer	On a corporate level, the transfer of shares in a Corporation is relatively straightforward. However, the seller and buyer have to be cautious with regard to tax pitfalls.
Corporate conversion	<p>A stock corporation may be converted into a “One Person Corporation” (OPC) and vice versa. When all the stocks of an ordinary stock corporation are acquired by a single stockholder, the stock corporation may apply for conversion into an OPC through an amendment of its articles of incorporation to be approved by the SEC. Similarly, the OPC can be converted into an ordinary stock corporation when there are 2 or more stockholders owning the stocks of the OPC. An amendment of the OPC’s articles of incorporation also has to be approved by the SEC.</p> <p>A merger or a consolidation of Corporations are the recognised corporate combinations governed under the Revised Corporation Code. Both need to be approved by the SEC.</p>
Insolvency proceedings	<p>Insolvency proceedings are governed by the Financial Rehabilitation and Insolvency Act (FRIA). A financially distressed Corporation may apply for</p> <ul style="list-style-type: none"> – an out of the court restructuring agreement – pre-negotiated rehabilitation – court supervised rehabilitation – liquidation by dissolution
Cross-border insolvency regime	Section 139 FRIA adopts the UNCITRAL Model Law on Cross-Border Insolvency. Section 140 – 142 FRIA provide for the specific procedural rules.
Liquidation	<p>Dissolution: A Corporation may end its corporate life by voluntary dissolution (where creditors are affected or where no creditors are affected) or shortening of its corporate term by amending its Articles of Incorporation. The latter being the more common option.</p> <p>Winding up: A Corporation may be dissolved voluntarily or involuntarily. In the case of voluntary dissolution, the two situations covered are either where there are no creditors involved or where creditors are affected.</p> <p>Every corporation which is dissolved continues to exist as a corporate body for three (3) years after the effective date of dissolution, for the purpose of winding up, i.e. to prosecute and defend suits by or against it and enabling it to settle and close its affairs, dispose of and convey its property, and distribute its assets, but not for the purpose of continuing the business for which it was established.</p>

Adjustments of work arrangements	Due to the principle of security of tenure enshrined in the Philippine Constitution and Labour Code, it is generally challenging to adjust work arrangements to the disadvantage of the employee. Nonetheless, to prevent job losses due to the COVID public health crisis, the Department of Labour and Employment issued Labour Advisory No. 09 of 2020 allowing flexible work arrangements under specific requirements.
Retrenchment	It is possible to carry out retrenchment exercises to prevent losses, subject to: <ul style="list-style-type: none"> - Fair & reasonable selection criteria - Written notice to employee - Notification to DOLE - Separation pay
Mandatory compensation in case of termination of commercial agencies or distribution agreements	No statutory compensation. However, compensation might be based on the agreement.
Assignments of contracts	Assignments and novation of contracts possible subject to the respective commercial contract.
Transfer of assets overseas	It is generally possible to transfer tangible assets, such as movable and immovable property as well as intangible property (IP rights etc.) to a foreign entity.

CURRENT SITUATION

Singapore has responded early to the threat of COVID-19 with social distancing, contract tracing, quarantine measures and travel restrictions. As a result of high numbers of infections in dormitories of foreign workers, the government of Singapore implemented a partial lockdown in early April 2020 which is expected to be in place until 1 June 2020. Several measures will remain in place after the lockdown to maintain a low number of infections. To cushion the economic effects, the government has introduced several stimulus packages.

PERSPECTIVE DURING COVID-19

Assuming that the infection numbers are low by the beginning of June, the Singapore government is likely to balance the need to open up again after the partial lockdown against health security concerns to avoid another outbreak. Given its role as an aviation hub, it is likely that the city state will lift travel restrictions as soon as a certain degree of safety can be provided. As an advanced economy in the region, Singapore might function as a safe haven for business in Asia-Pacific.

PERSPECTIVE AFTER COVID-19

For many foreign investors, Singapore is the preferred hub and the jurisdiction of choice in the Asia-Pacific region. Given its political stability, an environment with a robust enforcement of laws, world-class infrastructure and a high level of education compared to the other countries in the region, it is very likely that Singapore will continue to be the preferred hub for Asia-Pacific in the future. Furthermore, Singapore has established itself as dispute resolution and debt restructuring hub in recent years, which might further boost Singapore's central role in the region after COVID-19.

Rödl & Partner in Singapore can be your coordinator of choice in the Asia-Pacific region. As many companies are using Singapore as hub and holding location for their business in Asia-Pacific, Rödl & Partner in Singapore can support you as a one-stop-shop for your consolidation or restructuring exercise in the Asia-Pacific region. We have coordinated cross-border tax and legal assessments and subsequently implemented such restructuring exercises for numerous clients in the past.

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BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* *referring to Private Limited Companies	A Company can be put dormant in order to reduce compliance requirements and costs.
Nominee directorship	Every Company must have one director who is locally resident in Singapore. It is possible to utilise nominee directorships to comply with this requirement.
Incorporation of holding Company	In general, incorporations of Companies are relatively easy and fast in Singapore. If it is required that the holding company has been incorporated for a certain period of time, it is possible to purchase an existing dormant Company (Shelf Company).
Share Transfer	Share transfers are relatively easy and fast in Singapore as in most cases there are no investment registration, approvals or licensing regimes to adhere to.
Corporate conversion	The following corporate conversions are governed under the law: <ul style="list-style-type: none"> - Amalgamation - Re-domiciliation (conditions apply and only inwards) - Change of legal form (limited, for example Company to LLP)
Cross-border conversion regime	Singapore does not permit a cross-border merger. However, Singapore does allow under certain circumstances an inward re-domiciliation of companies to Singapore.
Insolvency proceedings	Schemes of arrangement, receivership and judicial management are available alternatives which may lead to return into solvency.
Cross-border insolvency regime	Singapore has adopted the UNICITRAL model law in cross-border insolvency and provides rules on cross-border insolvency proceedings.
Liquidation	<ol style="list-style-type: none"> 1. Striking off: A Company can be struck off from the registry if inter alia it has no assets and no liabilities. In general this is easier and faster than a winding up. 2. Winding up: Different forms of winding-up of Companies: <ul style="list-style-type: none"> - Voluntary winding-up (initiated by the shareholders) - Mandatory winding-up
General tax implications for corporate conversions	<ul style="list-style-type: none"> - No capital gains tax; - Low tax on share transfer; and - Tax frameworks / schemes for certain corporate conversions available.
Adjustments of work arrangements	It is possible to adjust work arrangements with or without salary cuts, subject to <ul style="list-style-type: none"> - Consent of union or employee - Notification to authorities
Retrenchment	It is possible to carry out retrenchment exercises, subject to: <ul style="list-style-type: none"> - Notification to workforce - Notification to authorities - Retrenchment benefits

Mandatory compensation in case of termination of commercial agencies or distribution agreements	No statutory compensation. However, compensation might be based on the agreement.
Assignments of contracts	Assignments and novation of contracts possible subject to the respective commercial contract.
Transfer of assets overseas	It is possible to transfer tangible assets, such as movable and immovable property as well as intangible property (IP rights etc.) to a foreign entity.

CURRENT SITUATION

Thailand has implemented various measures under an Emergency Decree to prevent the further spread of COVID-19, including the closure of certain businesses and restricting the access of foreigners to the Kingdom. The restrictions will remain in force at least until end of June 2020, though some restrictions have been lifted or relaxed already. Subsequently, the country will open up step by step, closely monitoring the infection rates. Furthermore, the Government has set in motion a layered plan to mitigate the economic impacts of the crisis, such as tax and social security relief, and special loan programs. Apart from these measures, a stimulus package has been introduced.

PERSPECTIVE DURING COVID-19

The crisis lead to a significant dip of confidence in the Thai business community as measured by the University of the Thai Chamber of Commerce. Given Thailand's dependency on exports and tourism, the crisis has a severe impact on Thailand's economy. The IMF predicts that Thailand's economy might shrink by seven percent in 2020. Unemployment will increase significantly. On the upside, the crisis forced Thailand to reconsider some bureaucracy to facilitate social distancing: i.e. electronic submission of documents, holding of virtual shareholder and board meetings and further measures have been implemented to prevent the spread of COVID-19. Additionally, companies made valuable experience on the feasibility of home office set-ups.

PERSPECTIVE AFTER COVID-19

Thailand remains one of the most relevant investment destinations in Southeast Asia. The Eastern Economic Corridor is an area with dense international investment, excellent infrastructure and comparably low costs. The Thai Board of Investment has announced additional incentives to increase the investment, especially regarding the manufacture of medical supplies and devices. Tourism is also likely to bounce back, though the Tourism Authority of Thailand estimates that the upswing will happen earliest in the last quarter of 2020.

Rödl & Partner in Thailand supports and facilitates your investment in Thailand as a one-stop-coordinator regarding all legal and tax requirements, as well as general business consulting. Over the years, we have seen many political and economic challenges in Thailand, and we have successfully helped our international clients to consolidate, adapt, and restructure to ensure the commercial success of their investments despite these challenges.

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BASIC INFORMATION FOR CONSOLIDATION AND RESTRUCTURING

Dormant Companies* *referring to Private Limited Companies	A Company can be put dormant in order to reduce compliance requirements and costs.
Nominee directorship	Every Company must have at least one director who does not have to be present in Thailand. It is possible to utilise nominee directorships.
Incorporation of holding Company	In general, incorporations of Companies are relatively easy and fast in Thailand. There is no minimum capital required in order to incorporate a company (however, certain capital requirements might apply in case of foreign investment).
Share Transfer	Share transfers are relatively easy and fast in Thailand, requiring a share transfer document, issuing of new share certificates, registration in the share register book and finally updating the list of shareholders
Corporate conversion	The following corporate conversions are governed under the law: <ul style="list-style-type: none"> - Conversion of a Limited Partnership to a Limited Company - Conversion of a Registered Partnership to a Limited Company - Conversion of a Private Company Limited to a Public Company Limited - Amalgamation of limited companies
Cross-border conversion regime	There is no specific cross-border conversion regime in Thailand.
Insolvency proceedings	<p><u>Bankruptcy</u> proceedings have to be commenced by a creditor, and leads to the distribution of available assets amongst the debtors. The proceeding is administered by the Bankruptcy Court.</p> <p><u>Rehabilitation</u> (Restructuring) provides temporary protection against claims from creditors to allow for a rehabilitation of the debtor under the supervision of the Bankruptcy Court. If the Rehabilitation fails, bankruptcy proceedings commence.</p>
Cross-border insolvency regime	There is no specific cross-border insolvency regime in Thailand.
Liquidation	A company can be dissolved by preparing financial statements as of the date of dissolution, paying all outstanding debts, distributing the remaining assets amongst the shareholders of a company and finally dissolving the company.
General tax implications for corporate conversions	No specific taxation.
Adjustments of work arrangements	<p>Unilateral changes to the employment agreement which disadvantage employees are not permitted (i.e. cutting the salary). Changes benefitting the employee (i.e. cutting working hours only) are possible. Adjusting salaries requires:</p> <ul style="list-style-type: none"> - Employee's written consent - Under special circumstances if the company ceases the business temporarily, subject to the information of the employees and the labour inspector, salary may be cut to 75 percent.

Retrenchment	Termination for redundancy is possible. However, companies are required to make severance payment and other payments owed under the law. Furthermore, companies should prepare such termination carefully to avoid claims for unfair termination. Companies have to abide by objective criteria applied fairly and objectively.
Mandatory compensation in case of termination of commercial agencies or distribution agreements	The laws do not prescribe a compensation. However, if an agency agreement is revoked and the agent suffers damages, the principal can be held liable.
Assignments of contracts	<p>Assigning contracts is generally possible. Certain requirements apply (i.e. written form, etc.)</p> <p>Novation is possible under the law, subject to certain requirements.</p>
Transfer of assets overseas	It is possible to transfer tangible assets, such as movable and immovable property as well as intangible property (IP rights etc.) to a foreign entity.

CURRENT SITUATION

As one of the first countries in the region, Vietnam responded with strict distancing rules and further restrictions. The result of these strict rules are positive. Vietnam has one of the lowest numbers of COVID-19 cases in the region, but at the same time a high ratio of testing implemented. Immediate closure of borders to the neighbouring China in January and other countries in the region and beyond respectively has provided the population of Vietnam with a high level of safety. Several measures remain in place after a three – week lockdown was lifted maintain a low number of infections. Vietnam has not implemented relevant economic support programs.

PERSPECTIVE DURING COVID-19

Vietnam has opened up its businesses on 28 April and 15 May respectively. Local travel via public and private transportation is possible and there are no restrictions to domestic travel. International inbound travel is banned while outbound is possible, but depending on the destinations requirements. Despite heavily relying on the tourism sector and international investments in general, it is not expected that Vietnam will lift its inbound connections sooner than other countries in the region. The health system is not designed to handle massive amounts of serious impacts, hence the step by step approach from the Vietnamese Government.

PERSPECTIVE AFTER COVID-19

For many foreign investors, Vietnam is an increasingly interesting destination due to its relaxed foreign investment regulations, young labour force, attractive incentive programs and political stability. Vietnam will not jeopardise this status and will work on a sustainable implementation of measures to get the economy up running at previous levels again. The Prime minister of Vietnam expects the economy to grow by 5.5 percent in 2020, whereas other experts expect growth rates of about 3 percent. Vietnam will, however, remain a relevant destination for foreign investors for diversification from countries in the region, particularly including China.

Rödl & Partner in Vietnam supports foreign investors as a one-stop-service covering all relevant professional services for a foreign investor in the country. During and after COVID-19, companies in the country will face requirements to corporate and HR restructuring. Rödl & Partner Vietnam handles a number of relevant projects of any size. Our expertise focusses on the handling of such projects with a practical approach to our clients.

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Dormant Limited Liability Company (LLC)	An LLC can be put dormant. Dormancy can be declared for one year and be extended one more year. The company can be re-activated with 15 days notification of such re-activation.
Power of Attorney (POA) on behalf of foreign legal representative	Every LLC must have one legal representative residing in the country. If the legal representative is not a resident, he can authorise someone who fulfils this requirement via POA to act on his behalf.
Incorporation foreign invested LLC's	In general, incorporations of LLC's are relatively easy but take time for preparation. Most businesses are open for 100 percent foreign ownership and can be set up by one or more foreign investors. In most cases, the company setup takes between 20 to 25 days in total.
Capital Contribution Transfer (Share Deal)	The transfer of capital contribution in a LLC or any other form of company is possible and rather transparent. The administrative procedure involves a number of steps and takes about 3 months in total. In case of a share deal, a prior due diligence is strongly recommended in order to identify the risks involved.
Project termination	Companies in Vietnam can hold one or more projects; each activity such as distribution, production site, service, etc. is considered a project. Projects can be terminated individually without impact on the company as a whole. A non-profitable production site can for example be terminated without the requirement to terminate the Company as a whole.
Insolvency proceedings	Schemes of arrangement, receivership and judicial management are available alternatives which may lead to return into solvency.
Insolvency proceedings	Schemes of arrangement, receivership and judicial management are available alternatives which may lead to return into solvency.
Liquidation	<p>Liquidation procedures take time. They involve a number of administrative steps and include a tax finalisation of each project. Duration of such can take months or even years depending on the extend of the project.</p> <p>In light of COVID, it is recommended to initiate dormancy first and if within two years the economic outlook is still not positive, liquidation can be initiated. An alternative to Liquidation can be the sale of the company.</p>
Adjustments of work arrangements	<p>It is possible to adjust work arrangements with or without salary cuts, subject to</p> <ul style="list-style-type: none"> – Consent of union or employee – Notification to authorities
Retrenchment	It is possible to carry out retrenchment exercises, subject to the agreement of the employee

Termination	<p>Under normal circumstances, employments cannot be easily terminated unilaterally; an agreement on a termination notification period in the labour contract is invalid. COVID is considered Force Majeure in Vietnam, and this leads to the option of unilateral termination, if the following is the case and can be proven:</p> <ul style="list-style-type: none"> - Employer is suffering from financial difficulties that result directly from the pandemic. - The economic impact of the pandemic is going to lead to ongoing financial restraints in the future. - Employee will not be replaced, position is redundant.
Mandatory compensation in case of termination of commercial agencies or distribution agreements	No statutory compensation. However, compensation might be based on the agreement.
Assignments of contracts	Assignments and novation of contracts possible subject to the respective commercial contract.
Transfer of assets overseas	It is possible to transfer tangible assets, such as movable and immovable property as well as intangible property (IP rights etc.) to a foreign entity.

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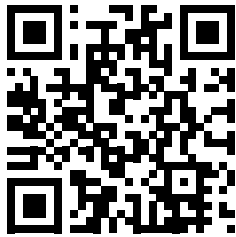


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