

# Eye-level exchange

## Quarterly ASEAN Newsflash

Latest news on law, tax and business in ASEAN

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### Note from the editor



Director Singaporean-German Chamber of Industry and Commerce. Thank you to all guests for the positive reactions and helpful recommendations during and after the event, we look forward to host our ASEAN Forum again in 2019.

In this edition we continue to keep track of current developments that could become relevant for your business in the region. Please do not hesitate to share your questions and remarks pertaining to any of the topics.

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Dear reader,

Welcome to the second edition of the ASEAN Newsflash. On January 25, more than 130 guests joined our 1st ASEAN Forum in Singapore and took a chance on an interesting exchange of ideas, knowledge and experience fostered by 10 different high-class lectures held by Roedl & Partner experts and guest speakers originating from 10 different countries. The day was concluded by a distinguished panel discussion with our valued guest speakers H.E. Dr. Ulrich A. Sante, German Ambassador to Singapore; Prof. Dr. Christian Roedl, CEO Roedl & Partner; Joerg Ellerkmann, Managing Director Asia/Pacific TRUMPF; Eng Leong Goh, Managing Director BASF Malaysia; Clemens Philippi, CEO ASEAN Euler Hermes and moderated by Dr. Tim Philippi, Executive

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## Quarterly ASEAN Newsflash

### > Hong Kong – ASEAN: Free Trade Agreement signed

On 12<sup>th</sup> November 2017, Hong Kong and the ten ASEAN member states (Brunei Darussalam, Indonesia, Cambodia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) signed a free trade and investment protection agreement in Pasay City, Philippines. After negotiations have been conducted since July 2014; the signing is now followed by the ratification procedure. The agreement is scheduled to enter into force on 1<sup>st</sup> January 2019. The agreement particularly covers the trade in goods, and governs issues such as rules of origin, non-tariff barriers, customs procedures and trade facilitation, as well as health and phytosanitary measures. Furthermore, there are regulations on trade in services, investments, economic and technical cooperation as well as mechanisms for dispute resolution. Especially in the field of service liberalization, most countries expressed comprehensive reservations in so called schedules of specific commitments.

Hong Kong, as a Special Administrative Region of the People's Republic of China, is not part of the Chinese customs territory. A free trade agreement between China and the ASEAN states has already entered into force in 2010. The new agreement will exacerbate competition for companies exporting to ASEAN, as national import tariffs on finished products remain. According to Chapter 3, Article 5 of the agreement, companies enjoy preferential tariffs only in case of a locally added value of 40 per cent.

By contrast, foreign manufacturers who produce in ASEAN or Hong Kong, and thus actually generate the required added value are increasingly benefiting from the agreed reduction in import duties. On the one hand, new sales markets in Hong Kong can be opened up for goods manufactured in ASEAN. On the other hand, the procurement costs for raw materials from Hong Kong for production activities in ASEAN have been reduced. It should be noted that in practice, despite the tariff reduction obligations, non-tariff barriers to trade exist at national level or can be introduced at any time, e.g. special import certificates or clearance certificates which have to be submitted by the importer. This definitely needs to be considered upon planning supply chains.

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### > Indonesia – Forging Plans: New Provisions on Country-by-Country Report

The Director General of Tax (DGT) issued Regulation No. PER 29/PJ/2017 (PER-29), stipulating more detailed provisions with regard to the implementation of CbCR in Indonesia. This is in accordance with Indonesia's commitment to OECD BEPS Action 13, and the corresponding local regulation which has been issued on 31<sup>st</sup> December 2016, commonly known as PMK-213 regarding Transfer Pricing Documentation.

Certain information of the business group need to be disclosed in the CbCR, including global allocation of income, business and economic activity as well as taxes paid – all of these to be reported in a standardized template.

The newly-issued regulation introduces the term of Constituent Entities, along with Parent Entity and Subsidiaries. Constituent Entities are defined as any entities, covering both Parent Entity and all Subsidiaries, which are included in the CbCR. A Constituent Entity is required to prepare, maintain, and submit CbCR to its local tax authority on behalf of the Group, in case it meets certain requirements within its tax jurisdiction.

The CbCR will be automatically exchanged among tax jurisdictions who have signed a Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information. Indonesia itself has signed the agreement on 26<sup>th</sup> January 2017, and intends to put it into effect as of September 2018.

#### Parent Entity

Based on PER-29, a Parent Entity must prepare, maintain and submit CbCR if it meets the following conditions:

- a. Directly or indirectly controls or owns one or more Constituent Entities in a Group;
- b. Is required to prepare consolidated financial statements of a Group based on accounting standards or provisions applicable in its jurisdiction;
- c. Is not directly or indirectly owned by other Constituent Entities of a Group, or is owned by other entities, but these other entities are not required to conduct consolidated financial statements;

- d. Has a current year consolidated gross turnover of at least IDR 11 trillion for an Indonesian Parent Entity, or of 750 million EUR as an equivalent for an offshore Parent Entity, determined as of 1<sup>st</sup> January 2015, provided the jurisdiction of the Parent Entity does not oblige to submit CbCR anyway, or stipulates a different predetermined threshold.

### Indonesian Subsidiaries

Based on PER-29, Indonesian Subsidiaries are defined as follows:

- a. Separate entity of an MNE Group which is included in the consolidated financial statements of the business group;
- b. Separate entity of an MNE Group which is not included in the consolidated financial statements of the business group, merely based on its size or materiality position;
- c. Permanent Establishment (PE) of any separate entity as mentioned in point (a) or (b), in case it has separate financial statements for reporting, regulatory, tax, management, and control purposes.

### Obligations to Submit CbCR

Indonesian subsidiaries are required to submit CbCR to the DGT if Indonesia cannot obtain CbCR from other tax jurisdictions. This may occur if the jurisdiction of the Parent Entity:

- a. does not demand for the submission of a CbCR;
- b. has no Exchange of Information (Eol) agreement with Indonesia;
- c. has an Eol agreement with Indonesia, but certain conditions preventing it from obtaining the CbCR.

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### > Indonesia – New Regulation on Capital Investment Licensing and Facilities

The Indonesian Investment Coordinating Board BKPM issued a new policy on the implementation of capital investment licensing and facilities, which is laid down in

Regulation number 13 of 2017 (“Regulation 13”). Regulation 13, which entered into effect on 2<sup>nd</sup> January 2018 but is not yet fully implemented, contains provisions that, among others, allow foreign investment companies (“PT PMA”) in certain business lines to directly obtain their business licenses without the need to first obtain investment registrations, emphasize the prohibition of nominee arrangements and allow exemptions from divestment obligation with certain requirements.

Business licenses are classified as temporary or permanent. Both types of licenses are granted once the PT PMA has been established and is ready to start its commercial operations. The temporary business license is valid for one year and may only be extended for one additional year. It is granted to a PT PMA which is not deemed “large scale”. To be classified as large scale, a PT PMA needs to have (i) net assets exceeding IDR 10 bio, excluding the value of land and building, or (ii) annual revenue exceeding IDR 50 bio based on the latest financial report. Based on unwritten policy, BKPM currently interprets net assets to mean issued and paid-up capital; the required debt-to-equity ratio is 4:1. Accordingly, a permanent license requires the issued and paid-up capital to exceed IDR 10 bio. BKPM reviews the PT PMA’s articles of association as evidence for the company to have the required minimum paid-up capital.

According to the transitional provisions of Regulation 13, PT PMA that have obtained an investment registration based on BKPM Regulation No. 12 of 2009 on Guidelines and Procedures of Capital Investment Licensing, must apply for a business license within six months after the effective date of Regulation 13, i.e. until 2<sup>nd</sup> June 2018. Otherwise, BKPM might revoke the investment registration. Furthermore, principle licenses issued before Regulation 13 will remain valid until the expiry of their term, but the business license application of those licenses needs to be filed in observance of the provisions under Regulation 13. PT PMA that have obtained a business license but not yet fulfilled the large-scale requirements must, if they want to commence business, comply with the large-scale requirements.

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## > Malaysia – Enactment of Budget 2018 Proposals into Legislation

On 29<sup>th</sup> December 2017, the Finance (No.2) Act 2017 ("the Act") was enacted to incorporate the 2018 Budget proposals into the Income Tax Act 1967, Real Property Gain Tax Act 1976, Goods and Services Tax Act 2014 and the Finance Act 2013.

The following are some of the key changes:

### Individual Tax

- The individual income tax rate for residents will be reduced by 2 % for chargeable income between RM 20,001 and RM 70,000.

### Corporate Income Tax

- With effect from Year of Assessment ("YA") 2019, companies, limited liability partnerships, trust body or co-operative societies are required to notify the Director General of Inland Revenue of any change in its accounting period by a specified due date.
- Introduction of Earning Stripping Rules ("ESR") with effect as of 1<sup>st</sup> January 2019 (to replace Thin Capitalisation Rules) whereby interest deduction on loans between related companies within the same group will be limited to a ratio to be determined.
- Change in determination of Residual Expenditure ("RE") of an asset classified as Held For Sale ("HFS"). RE will now be determined as total qualifying expenditure less: (a) any initial allowance made to that person in relation to that asset for any YA; (b) any annual allowance made to that person in relation to that asset for any YA; and (c) an amount of annual allowance which would have been made for the basis period in which the asset was classified as HFS as if the asset had been used in that basis period for the purpose of a business.

### Real Property Gains Tax ("RPGT")

- The retention sum, i.e. the sum required by the acquirer to retain and remit to the Inland Revenue Board within 60 days from the date of disposal is increased to 7 % of the total value of the consideration where the disposer is not a citizen and not a permanent resident.
- RPGT at (a) 30 % for disposal of chargeable asset within 5 years; or (b) 5 % for disposal of chargeable asset in the 6- year onwards is applicable to an executor of estate of a deceased person who is not a citizen and not a permanent resident.
- Where disposal / acquisition of real property requires governmental approval, with effect from 1<sup>st</sup> January 2018 it is only limited to approval by Government of State Government and not an authority or committee appointed by the Government or State Government.

## Goods & Services Tax ("GST")

- The Director General is allowed to assess GST or invoke penalties on any non-taxable person, where the non-taxable person has failed to make the required GST declaration, or furnished an incomplete / incorrect GST declaration.
- Payment of Human Resource Development ("HRD") levy by an employer is treated as neither being a supply of goods nor a supply of services.

Change in GST treatment for supplies and acquisitions by local authorities whereby all supplies by local authorities are to be treated as "out-of-scope supply" and all acquisitions are given GST relief

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## > Philippines – The Tax Reform TRAIN on its First Stop

... in our last Newsflash for 2017, we covered the proposed changes to Philippine tax laws under the "Tax Reform for Acceleration and Inclusion Act" (also known as the "TRAIN"-Act).

The TRAIN-Act, which is only the first package of a total of 5 tranches, is already amongst the most comprehensive tax reforms in the Philippine history since 1997. It is also the first time in decades for the Philippine government to pass a major tax reform that is not a response to a crisis or a condition set up by a multilateral financial institution.

The 1<sup>st</sup> TRAIN-package covered by this newsletter was signed into law on 19<sup>th</sup> December 2017. It primarily focuses on Personal Income Tax matters (PIT).

The most anticipated reform project for 2018 will be the 2<sup>nd</sup> TRAIN-Package which is intended to lower corporate (income) taxes to provide the Philippines with a more competitive tax regime. The other packages in the years to come will inter alia amend and update the regimes on property, capital related taxes, tax amnesty etc.

In addition to the above, the Philippines administration is in the midst of a process to increase its efficiency for tax collections as well as streamlining tax related proceedings, continuing the fight against corruption and lowering bureaucracy.

In line with the 10 Point-Agenda of the current administration, the various reform undertakings have to be seen in the light of high and inclusive economic growth. In particular lowering poverty rates and reducing income inequality as well as the massive 180 Billion USD "Build-Build-Build"-program to boost the country's infrastructure development.

The TRAIN Package I (Republic Act No. 10963) came into effect in most parts on 1<sup>st</sup> January 2018. Due to the short timeframe between the parliament vote and the enactment of the law, certain implementing rules and guidelines were published only recently, are still outstanding or need further clarification. Furthermore, the TRAIN-Package's legality is currently questioned in front of the Supreme Court of the Philippines due to some technical "hiccups" when the bicameral conference of the Congress passed the law.

Nonetheless, without a restraining order from the Supreme Court, the law is fully in force since the beginning of this year and may be summarized as follows:

### Lowered Income Tax Rate / Brackets

While the top tax rate for the "super-rich" was not lowered but instead increased from 32 to 35 % (comparable to Vietnam and Thailand), most lower to medium income groups experienced a positive surprise receiving their latest pay slips. This results from a change of the tax brackets which had been barely adjusted to higher wages and inflation in 20 years.

Amount Of Taxable Income in PHP Per Year		New Tax Rate from 01. Jan. 2018
Over	But Not Over	
0	250'000	0 %
250'000	400'000	20 % of the excess over 250'000
400'000	800'000	30'000 PHP + 25 % of the excess over 400'000
800'000	2'000'000	130'000 PHP + 30 % of the excess over 800'000
2'000'000	8'000'000	490'000 PHP + 32 % of the excess over 2'000'000
8'000'000	-	2'410'000 PHP + 35 % of the excess over 8'000'000

By 2023, the income tax rates will be further adjusted as follows:

Amount Of Taxable Income in PHP Per Year		New Tax Rate from 01. Jan. 2023
Over	But Not Over	
0	250'000	0 %
250'000	400'000	15 % of the excess over 250'000
400'000	800'000	22'500 PHP + 20 % of the excess over 400'000
800'000	2'000'000	102'500 PHP + 25 % of the excess over 800'000
2'000'000	8'000'000	402'500 PHP + 30 % of the excess over 2'000'000
8'000'000	-	2'202'000 PHP + 35 % of the excess over 8'000'000

For easier comparison please find below the tax table applicable for personal income earned until the end of 2017.

Amount Of Taxable Income in PHP Per Year		Tax Rate until 31. Dec. 2017
Over	But Not Over	
0	10'000	0 %
10'000	30'000	500 PHP 10 % of the excess over 10'000
30'000	70'000	2'500 PHP + 15 % of the excess over 30'000
70'000	140'000	8'500 PHP + 20 % of the excess over 70'000
140'000	250'000	22'500 PHP + 25 % of the excess over 140'000
250'000	500'000	50'000 PHP + 30 % of the excess over 250'000
500'000	-	125'000 PHP + 32 % of the excess over 500'000

In addition to the changes to the tax rate/brackets, the non-taxable threshold for 13<sup>th</sup> month pay and other bonuses is increased from 82'000 to 90'000 PHP. On the other hand, the act removed general tax exemptions such as the personal exemption of 50'000 PHP per tax year and additional exemptions for qualified dependents of a maximum of 100'000 PHP per tax year.

### Financing Provisions

To offset the potential revenue loss from the lowered effective tax rate, further tax exemptions were removed or cross-financing taxes raised/implemented, such as:

#### Cancellation of Tax Benefits

- Special tax rates for RHQ, ROHQ etc.

#### Implementation of New Taxes

- Sugar Sweetened Beverages (6-12 PHP/l)
- Non-essential cosmetic procedures (5 %)
- PCSO & lottery winnings (taxable above 10'000PHP)

#### Taxes Raised

- Fringe Benefit Tax (32 to 35 % starting 01/01/2018)
- Automobiles (partially increased/ lowered depending on price of the car)
- Fuel (2,5-6 PHP/l annual increase)
- Tobacco (1,30-8,80 PHP/pack gradual increase)
- Coal (40-140 PHP/metric ton gradual increase)
- Minerals (100 % increase on existing rates)
- Documentary Stamp Taxes (100% increase on existing rates except for specific transactions)
- Interest from Foreign Currency Deposit Units (7,5 to 15 %)
- Capital Gains Tax for stocks not traded in the stock exchange (5/10 to 15 %)
- Stock Transaction Tax on listed shares (0.5 of 1 % to 0.6 of 1 %)

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### Tax Cuts

- Estate tax (from 5-20 % to 6 %)
- Donor's tax (from 0-30 % to 6 % in excess of 250'000 PHP)

### Value Added Tax (VAT)

- Registration Threshold increased from 1'919'500 to 3 M.PHP
- Exceptions on medicine / association dues and transfers under Sec 40(c)(2) (Exchange of Property forming part of a merger / consolidation)
- Certain VAT exemptions cancelled
- Sale of goods to Economic Zone (0 to 12 % upon implementation of enhanced VAT-refund system) \*BIR clarification required

### Administration

As a part of the reform principle to create a simpler, fairer and more efficient tax system, certain tax reporting measures have been simplified. For example withholding tax (except for compensation and VAT) and Percentage tax filings were changed from monthly to quarterly filing. Reports shall be continuously streamlined, and penalties have been reviewed. The deficiency and delinquency interest rate was for example lowered from previously 20 % each to double the legal interest rate per annum (each).

There are plenty more changes and details for the first stop of the TRAIN tax reform, and the changes or publication of newly implemented rules and decisions in particular should be closely monitored. We will be happy to consult you further on these aspects.

Summing up, the implementation of the first package of the tax reform in a very short period of time is clearly a big step into the right direction, and bears more evidence of the continuous progress the Philippines has made over the last years. The TRAIN has picked up speed and after its first stop, entrepreneurs and the industry in particular are curiously looking forward towards the corporate (income) tax package of the tax reform within this year – particularly expecting a lowered corporate income tax to enhance the Philippines' competitiveness in tax terms.

The implications of the current package on businesses and individuals still remain to be seen. Particularly, whether the revenue targets can be met despite the lowered PIT; how a likely increased inflation catalyzed by Package 1 will eat into the tax benefits received by individuals; and how the increased costs will affect the poorest and those who did not yet have to pay taxes under the old regime.

... to be continued ...

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### > Singapore – Enhanced Reporting Obligations for German Tax Residents with Holdings in Overseas Companies

German tax residents are now facing enhanced reporting obligations in case of holdings in overseas companies under the German code which aims to combat tax avoidance ("StUmgBG") (Steuerumgehungsbekämpfungsgesetz) which came into effect in June 2017. The StUmgBG aims to address tax evasion such as those revealed in the so called Panama Papers in 2016. One of the key elements of the StUmgBG is an enhanced reporting duty governed under Sec. 138 subsection 2 of the German Fiscal Code (Abgabenordnung) ("AO") which is amended by the StUmgBG.

### Reporting of holdings

- German tax residents, such as companies with their registered seat in Germany, are obliged to report an incorporation or an acquisition of a business or a permanent establishment overseas as well as an acquisition, sale or change of a holding in an overseas partnership. Furthermore, German tax residents must report an acquisition or sale of a holding in a company, association of persons or conglomeration of assets with registered seat or management overseas, if the following thresholds are exceeded
  - > the holding of at least 10 % of capital or assets of such company, association of persons or conglomeration of assets; or
  - > the total cost of acquisition of all holdings exceeds EUR 150,000.

In regards to the described scenarios, the reporting obligation applies, regardless whether such holding is of direct and/or indirect nature.

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### Reporting of influence on a third-country-company

- German tax residents are also obliged to report the fact that they, alone or together with a related party [as defined in Sec. 1 subsection 2 of the German code of Control Foreign Corporation (Außensteuergesetz)], for the first time directly and indirectly dominate or control corporate, financial or business matters of a third-country-company. Third-country-company means any company, partnership, association of persons or conglomeration of assets with its registered seat or its place of management outside of the European Union or the European Free Trade Association.

### How and when to report

- The reporting of holdings as well as the reporting of influence on a third-country-company shall be conducted together with the respective tax filing. The deadline for reporting obligations for matters occurred before 31<sup>st</sup> December 2017 is the 31<sup>st</sup> May 2018. The reporting for matters occurred upon the 1<sup>st</sup> January 2018 shall be required within the tax filing or at the latest 14 months after the respective financial year.

Since non-compliance with the StUmgBG might trigger penalties in Germany, we recommend to disclose and discuss with your tax advisor in Germany any potential holdings or influences. Upon request, Rödl & Partner can assist you with your tax compliance in Germany.

### > Singapore – Enhanced Reporting Obligations for German Tax Residents with Holdings in Overseas Companies

On 19<sup>th</sup> February 2018, Finance Minister, Heng Swee Keat, presented Singapore's Budget 2018. Below are some highlights on some of the major Budget announcements.

#### Goods and Services Tax

In order to cover increased healthcare, infrastructure, security and education expenses, the Government plans to raise the Goods & Services Tax ("GST") by 2 %, from 7 % to 9 %, sometime in the period from 2021 to 2025. As of 1<sup>st</sup> January 2020, the Government will introduce GST on imported services such as apps, music and movies.

### Corporate Income Tax Rebate

The Government will enhance and extend the Corporate Income Tax ("CIT") rebate. For Year of Assessment 2018, the CIT rebate will be raised to 40 % of tax payable, capped at SGD 15,000. The CIT rebate will be extended to Year of Assessment 2019, at a rate of 20% of tax payable, capped at SGD 10,000.

### Start-up Tax Exemption and Partial Tax Exemption

Starting in Year of Assessment 2020, the Government will restrict the tax exemptions under both schemes to the first SGD 200,000 of chargeable income (instead of currently SGD 300,000). Further, for start-ups, the Government will exempt 75 % (instead of 100 % currently) of their first SGD 100,000 of chargeable income from corporate tax.

### Tax Deductions

The Government will raise the tax deduction (a) on licensing payments for the commercial use of intellectual property ("IP") from 100 % to 200 %, capped at SGD 100,000 of licensing payments per year; (b) for IP registration fees from 100 % to 200 %, capped at SGD 100,000 of IP registration fees per year; and (c) for qualifying expenses incurred on Research & Development done in Singapore from 150 % to 250 %.

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### > Thailand – Update on Transfer Pricing, Visa and ASEAN Trade in Goods Agreement (ATIGA)

#### Cabinet approves revised draft on transfer pricing provisions

In early 2018, a revised draft regarding new transfer pricing provisions was approved by the Cabinet. The draft, if enacted, might take retroactive effect, applying to accounting periods from 1<sup>st</sup> January 2017 onwards. However, the Ministry of Finance has announced that the date is being reconsidered.

Furthermore, in the future, taxpayers will have the following obligations:

- **Transfer Pricing Disclosure Form:** Depending on their annual revenue, taxpayers will have to submit a transfer pricing disclosure form. The information will allow the Revenue Department to assess whether further investigation is necessary. The specifics will be subject to further ministerial regulations.
- **Transfer Pricing Report:** Taxpayers will have to prepare a transfer pricing report. This report has to show all relevant information regarding transactions with affiliated companies. The exact extent of required information will be subject to further ministerial regulations. The Revenue Department may request the report within 5 years from the filing of the transfer pricing disclosure form.

If taxpayers' transactions do not comply with the arm's length principle, the Revenue Department will have the authority to adjust revenue and expenses to the market price. Taxpayers not complying with the above disclosure requirements will face penalties.

Taxpayers are well-advised to start keeping records regarding the pricing of transactions with affiliates. The pricing should be done in accordance with the departmental instructions No. Paw. 113/2545.

### Smart Visa

On 1<sup>st</sup> February 2018, Thailand introduced its new *Smart Visa*, aimed at attracting highly skilled professionals. The new visa type will be divided into four categories, *Talents* (T-Visa), *Investors* (I-Visa), *Executives* (E-Visa) and *Startup* (S-Visa). Smart Visa will allow foreigners to work in Thailand without the requirement of obtaining a work permit. It can also be valid up to 4 years (T, I and E). Additionally, holders of the Smart Visa only have to report to the immigration authorities once a year instead of every 90 days, and a re-entry permit will no longer be required. Spouses and children will be granted the same privileges as the holder (especially the right to work in Thailand).

Applicants have to work in a targeted industry: automotive, intelligent electronics, tourism and health tourism, agriculture and biotechnology, food processing, robotics, aviation industry and logistics, biofuel and bio-chemical industries, digital industry and comprehensive medical industry.

It remains to be seen how the authorities will handle Smart Visa applications. However, foreigners planning to do business in one of the targeted industries should assess whether they are eligible for a Smart Visa.

### Electronic submission of Form D

The Department of Foreign Trade of Thailand announced electronic filing of Form D starting 1 January 2018. Form D is a certificate of origin necessary for preferential treatment of goods under the ASEAN Trade in Goods Agreement (ATIGA).

According to Article 26 of the ATIGA-Agreement, a good has origin in a member state if

- the good is either wholly obtained or produced in the exporting member state or
- is not wholly obtained or produced in a member state but contains a certain regional value content or
- materials used in the production of the good were processed in a member state in a way that they have to be substantially re-classified regarding tariffs.

The electronic filing of Form D is part of a broader strategy to facilitate trade and regional integration in ASEAN. The goal is to create an ASEAN Single Window to speed up the cargo clearance process by exchanging relevant information electronically.

Countries initially taking part in the new e-Form D are Indonesia, Malaysia, Singapore, Thailand and Vietnam. The remaining ASEAN states are expected to implement the Form after successful introduction by the initiating countries.

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### > Vietnam – Company Formation Requirements in Vietnam

The Vietnamese legal environment is ever changing, attempting to cope with the country's rapid economic growth. As such, the country has recognized a significant requirement to improve the legal environment in order to increase the ease of doing business.

### Current Status

Vietnam's market entry is considered the second most liberal entry in the region, being next only to Singapore. Its international connectivity with other countries and Unions puts Vietnam into a position ahead of other countries.

Investments from overseas are growing significantly, and the Vietnamese government has identified this as a key to success. As a result, the Government is working on the ease of doing business in the country.

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The latest improvement for international investors is the new Decree No. 09/2018/ND-CP, detailing the Commercial Law on international goods sale and purchase and related activities of foreign-invested enterprises in Vietnam (replacing Decree 23/2007).

### Current Requirements

Foreign trading companies go through an Investment Process in Vietnam. At the end of this process, the companies are issued with an Investment Registration Certificate (IRC) and an Enterprise Registration Certificate (ERC). In general, the average duration of the application process amounts to 15 working days for the IRC, and another 5 working days for the ERC – which in total runs up to 20 working days, equaling approximately one month.

Once these licenses have been issued, distribution companies further require a Business License (BL) which is to be issued by the Ministry of Investment. Processes involving the Ministry of Investment may take quite some time. By law, the BL is supposed to be issued within 30 days, in practice it is actually likely to take longer, sometimes consuming more than three months.

Trading activities may then only be performed with the products that have been explicitly registered in the licenses. As such, HS codes are registered.

### New regulations

Distribution may be performed by way of wholesale and retail. Under the new regulations, only retail business is subject to the issuance of a BL and thus subject to a longer process. Distribution by way of wholesale therefore now is a comparably easy business scope to register. This has been significantly different in the years until 2015 when distribution took about 2 years to register.

Further to that – and this point unfortunately remains rather unclear under the new decree – it might be intended to eliminate the requirement to register HS codes in the licenses, which is limiting foreign investors to these products. In this the case, the foreign investor would no longer be limited in trade, and would therefore be treated as a local investor in this respect.

This would be a significant step forward, also having a considerable impact on capitalization, as under the current regulations the number of registered HS codes serves as a basis to determine the required capitalization.

### Conclusion

Reducing the burden of obtaining a BL is an important step forward as to the ease of doing business in Vietnam. If, however, the requirement to register HS codes in the license was suspended, this would definitely signify a considerable further improvement.

A clarification in terms of guidelines for this Decree is expected to provide a more reliable base for evaluation.

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