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QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:  
Q1/2020

Latest news on law,  
tax and business in ASEAN

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## → Note from the editor

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Dear reader

Welcome to the Q1/2020 edition of our ASEAN Newsflash. The new decade has started with global turmoil due to the COVID-19 coronavirus which was first reported in Wuhan, China in December last year. Since then countries around the world have imposed travel bans, increased border controls and quarantined citizens in an attempt to slow down the spreading of the virus. Meanwhile many of our clients have reported substantial impact on business and global operations, particularly due to office closures, limitations to travelling and the disruption of international distribution and supply chains, the latest heads-up being the 30 days ban on travel from Europe imposed by the President of the United States as of March 13. Being well aware that the exceptional situation does arise quite some questions from your side, we will highlight some of the major developments related to the further spreading of the coronavirus in the different ASEAN member states in this edition. You will find more detailed information on the corona pandemic and its impact around the globe in our [Article Series](#). In light of these developments and the risk assessment being risen to DORSCON Orange by the Singaporean government in early February, we regretfully decided to postpone our ASEAN Forum in Singapore, duly accepting our responsibility to safeguard the health and safety of our guests and our colleagues alike. We hope that we will have the pleasure to welcoming you as our guests again to our next Forum under more fortunate circumstances.

Besides all the negative news for global markets connected to the spreading of the coronavirus, we could also see some positive development for future international trade: On 12 February the European Parliament ratified the European Union Vietnam Free Trade Agreement (EVFTA) and the EU-Vietnam Investment Protection Agreement (EVIPA). The EVFTA will in the next step be ratified by the Vietnam National Assembly, expectedly in May 2020. Once in effect, this ambitious pact shall eliminate almost 99 percent of customs duties between the EU and Vietnam, and significantly improve market conditions for trade in services. The EVIPA will have to be ratified by the EU Member States before entering into effect.

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## → Indonesia

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### New provisions on the reporting of tax-related information of foreign customers

The Financial Service Authority (Otoritas Jasa Keuangan/OJK) recently issued a new Regulation, i.e. POJK Number 25/POJK.03/2019. The regulation supports the implementation of an Automatic Exchange Of Financial Information (AEOI), requiring Financial Service Institutions (Lembaga Jasa Keuangan/LJK) in the banking, capital market and insurance sector to report information pertaining to their foreign customers to the Director General of Taxation through the Financial Service Authority.

The required information comprises the identity of the customer holding a financial account in an Indonesian Financial Service Institution, the respective financial account number/s, the identity of the Financial Service Institution, the current balance of the financial accounts as well as an overview of the regular income in connection with these accounts.

The reporting via the Online Foreign Customer Information Reporting System (SiPINA) which is administered by the Financial Service Authority must be submitted no later than 60 days before the AEOI Agreement deadline for the exchange of financial information between the Indonesian government and the government of the respective jurisdiction partners. For example: If the deadline for the annual exchange of information between Indonesia and the relevant jurisdiction

partner is 30 September, the latest submission date for financial information up to 31 December 2019 would be 31 July 2020.

A financial service institution must appoint a person-in-charge for such reporting. If necessary, the person-in-charge may appoint an officer responsible for the report submission. The financial service institution needs to register online in order to obtain access rights to SiPINA from the authority.

Financial institutions which fail to submit such required report shall receive a written warning from the authority. The Regulation Number 25/POJK.03/2019 revokes the previous POJK Number 25/POJK.03/2015 and SEOJK Number 16/SEOJK.03/2017.

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## → Indonesia

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### Draft Omnibus Law submitted to Parliament

The Indonesian government has prepared two new pieces of legislation regulating numerous provisions regarding various industry sectors in respectively one law (known as “omnibus law”). The Omnibus Law aims at improving the ease of doing business in Indonesia and at attracting investment, thereby boosting job opportunities, competitiveness and economic growth. These omnibus laws are (i) a job creation law (RUU Cipta Kerja), which has been submitted to the parliament for further discussion on 12 February 2020 and (ii) an omnibus tax law (RUU Omnibus Perpajakan), which has not yet been made available to public.

The draft omnibus law concerning job creation focuses on the facilitation of doing business in Indonesia. It amends 73 laws and consists of 15 chapters and 174 articles. It provides, among others, simplified licensing and land acquisition processes, specific provisions on economic zones, removal of extensive local filing and registration requirements as well as a centralization of the government's investment competence. The amendments will affect several business sectors, such as trade, mining, construction, education or transportation. The draft features a number of key amendments to the Labor Law, notably on

licensing requirements for expatriates, employment termination, post-termination benefit schemes, employees' rights in case of an acquisition, and severance pay/termination pay, which has often been criticized as excessive by foreign investors. Generally, rights for severance payments, beyond basic allowances, are either set to be reduced or abolished completely, even though the calculation for basic severance seems to remain unchanged.

The draft law stipulates that all licensing processes shall be under the competence of the central government and no longer allocated to provincial governments. It thus appears to strengthen the role of the Investment Coordinating Board (BKPM) to streamline the issuance of all business licenses. It will be of specific interest for foreign investors that the draft omnibus law introduces a new list of sectors in which investment is prohibited, while others will be opened and regulated in a separate Presidential Regulation. Article 12 of Law No. 25/2007 shall be amended to no longer include a stipulation banning foreign investment in the negative investment list. This approach would replace the current negative investment list with a new investment list for priority sectors. Further details on this, however, remain undisclosed so far. The draft law also provides umbrella provisions for the central government to grant tax and fiscal incentives to specific sectors, particularly the tourism sector which shall be further developed in the future.

The omnibus law on job creation significantly relaxes environmental standards for business activities, which usually require an environmental impact analysis (Amdal). This includes an amendment of Article 23 in Law 32/2009 on environmental protection and management, governing the criteria that businesses must follow to request an Amdal prior to operation. These criteria include, among others, pollution, changes in natural landscape, resource exploitation, security risks, socio-cultural impact, conservation and cultural heritage. The Amdal assessment committees, which comprise the environment agency, related technical institutions, environment and technical experts, environmental organizations and public representatives, are revoked in the draft bill. Under the new draft only

businesses with "important effects on the environment, social, economic and culture" shall require an Amdal. Further details are yet to be provided in a government regulation.

After having been made public, the draft omnibus law raised several concerns. Labor groups are protesting that the bill contains potential reductions of their rights, remuneration and job security. Political observers have criticized the stronger role of central government, which might create risks to the checks and balances mechanism of Indonesia's democracy. Environmentalist groups have further raised concerns that less stringent environment impact analysis and building permit requirements could lead to unsustainable growth, particularly as environmental experts seem no longer involved in the environmental impact analysis. Business actors, on the other hand, responded positively to the bill due to the focus on streamlining business licenses, opening Indonesia further to foreign investment and creating a more flexible labor market.

The parliament is aiming for a conclusion of the draft law in deliberation within 100 days. It remains to be seen to what extent the revisions will boost investment business, but despite significant opposition i.e. from a labor and environmental perspective, the administration of president Joko Widodo seems determined to increase Indonesia's competitiveness and attractiveness among investment destinations in the Asia-Pacific region.

## CONTACT FOR MORE INFORMATION

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## → Malaysia

### Amendments to Malaysian Anti-Corruption Act 2009 to take effect

#### HAVE YOU DONE ENOUGH TO PREVENT BRIBERY AND CORRUPTION?

##### NEW CORPORATE AND PERSONAL OFFENCE

Back in April 2018, the Malaysian Parliament amended the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) to introduce a new section 17A, which deals with a new concept of corporate and personal liability for acts of bribery. The aim of the amendment is to underline Malaysia's commitment to a zero tolerance approach to bribery and corruption in the public and private sectors by placing the compliance burden on commercial organizations, its directors and managers. New section 17A of the MACC Act will give the Malaysian authorities an effective tool in respect of the enforcement against commercial organizations involved in bribery and corruption.

In essence, a commercial organization does commit the newly defined offence if a person associated with it commits an act of corruption in order to gain a commercial advantage for such organization. It is not required that the directors or managers of the company endorse or even know of the offence. This is a significant change to the current situation under Common Law, which required that the individuals managing a company knew of and pursued a criminal intent in respect of the bribery committed by the company's agents or employees.

The question as to who is "associated" with the commercial organization will have to be answered on a case to case basis. However, it seems clear that the definition will not be limited to officers and employees, but potentially extend to agents, distributors or even joint venture partners.

Upon conviction, the commercial organization will be liable to a penalty of ten times the bribe paid or offered, or 1m MYR, whichever is higher. In addition, a prison sentence of up to 20 years may be imposed. The commercial organization will be liable in respect of the fine, the question remains though, who will be liable for the imprisonment. The answer is quite simple: an officer or partner or employee tasked with the management of the commercial organization. The creation of a linked corporate and personal offence sends a clear message to individuals

involved in running businesses in Malaysia: Do comply or be held accountable.

##### DEFENSES

Once it has been determined that an act of bribery has been committed to secure or gain a commercial advantage for a commercial organization, there are only two defenses available:

- for commercial organizations: The relevant commercial organization needs to give proof that at the time the offence was being committed, it had adequate procedures in place designed to prevent such conduct;
- for individuals managing a business: The director and manager involved have to give proof that the act of bribery has been committed without his or her knowledge, and that he or she exercised sufficient due diligence to prevent the offence from being committed.

The new provisions are thus effectively reversing the burden of proof: If an offence is committed by a person associated with a commercial organization, the only way for managers and commercial organizations to escape liability is to prove the relevant defenses as provided by the MACC Act.

##### TIMELINE

The new section 17A of MACC Act has been enacted in April 2018 with the current timeline for enforcement being April 2020. The two year delay was required for relevant guidelines to be produced, and to give commercial organizations sufficient time to prepare for the new legislation.

##### WHAT'S NEXT FOR CORPORATES?

In the light of the fact that in addition to the corporate liability, also senior personnel of commercial organizations will be liable in respect of acts of bribery committed by associated persons for the benefit of the organization, it is essential that every commercial organization considers to develop and implement internal policies and procedures which will not only prevent bribery, but may also be put forward as a suitable defence under the MACC Act. Despite the fact that there

are guidelines and international standards available in respect of “adequate procedures”, it has to be noted that there is no suitable one-size-fits-all approach. The procedures and their implementation will always depend on the business of the commercial organization, its size and risk profile in respect of corruption.

Furthermore, for some commercial organizations it may not be sufficient to adopt procedures which deal with the behaviour of its officers and employees, as even business partners may be regarded as associated persons. In such cases, including relevant termination provisions in commercial contracts or conducting audits may be a useful tool to control the behaviour of business partners.

→ Malaysia

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## Gazette of Labuan Business Activity Tax (Amendment) Act 2020

The Labuan Business Activity Tax (Amendment) Act 2020 (“the Amendment Act”) was gazetted on 10 February 2020 and came into effect as of 11 February 2020 with the following key amendments:

With effect from year of assessment (“YA”) 2020, a Labuan entity which does not comply with the substantial activities requirements under the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2020 will be taxed at the rate of 24 percent on its chargeable profits for a YA under the Labuan Business Activity Tax Act 1990 (“LBATA”) and not under the Income Tax Act 1967 (“ITA”).

Labuan entities carrying on business will be regarded as tax resident if the management and control of business is exercised in Malaysia at

any time during the basis period. Other Labuan entities, on the other hand, will be regarded as tax resident if the management and control of its affairs at any time during the basis period for a YA are exercised in Malaysia by its directors, partners, trustees or other controlling authorities.

Royalty income or other income from the commercial exploitation of an intellectual property right is excluded from the profits of a Labuan entity carrying on Labuan non-trading activity. Such royalty income and other income from intellectual property rights will be subject to tax under the ITA. *[Effective 1 January 2019]*

→ Malaysia

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## 2020 Economic Stimulus Packages to Cushion Impact of COVID-19

The Economic Stimulus Package was announced on 27 February 2020 and focuses on strategies to mitigate the impact of the COVID-19 virus outbreak, to spur economic growth, and to promote quality investments.

### FINANCIAL ASSISTANCE TO BUSINESSES AND INDIVIDUALS:

- 15 percent discount in monthly electricity bills for hotels, travel agencies, airlines, shopping malls, conventions and exhibitions centres;
- Special Relief facility of RM 2 billion, particularly as working capital to Small and Medium Enterprises (“SMEs”) at an interest rate of 3.75 percent;

- Microcredit facility of RM 200 million to affected businesses at an interest rate of 4 percent;
- Agrofood facility of RM 1 billion provided at an interest rate of 3.75 percent to promote food production activities;
- SME Automation and Digitalization Facility of RM 300 million at an interest rate of 3.75 percent;
- Employees may choose to reduce their Minimum Employees Provident Fund (“EPF”) contribution from 11 percent to 7 percent. *[Effective from 1 April 2020 to 31 December 2020].*

## PROMOTING QUALITY INVESTMENTS

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- Ministry of Energy, Science, Technology, Environment and Climate Change (“MESTECC”) will open for bids quota of 1,400 MW for solar power generation, which is expected to generate RM 5 billion in private investments and 25,000 jobs;
- Malaysian Communications and Multimedia Commission (“MCMC”) will implement up to RM 3 billion on works related to the National Fiberization and Connectivity Plan (“NFCP”);
- A fund of RM 500 million to be co-invested with private investors on a ratio of at least 1 to 3, i.e. total funds amounting to RM 2 billion, for investment in early-stage and growth-stage Malaysian companies.

## TAX PROPOSALS

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- Businesses in the tourism industry (e.g. travel agencies, hoteliers, and airlines) will be granted a deferment of their monthly income tax instalments for 6 months from April to September 2020. Applications have to be made manually to the Inland Revenue Board;

- Companies will be allowed to revise their tax estimates earlier, i.e. in the third month of the instalment payment schedule, if the third month falls in 2020. Applications have to be made manually to the Inland Revenue Board;
- Accelerated capital allowances at the rate of 20 percent initial allowance and of 40 percent annual allowance will be granted on expenses incurred on machinery and equipment, including information and communications technology (“ICT”). *[Effective from 1 March 2020 to 31 December 2020]*;
- A special tax deduction of up to RM 300,000 will be granted for expenses incurred for renovation and refurbishment purposes. *[Effective from 1 March 2020 to 31 December 2020]*;
- Service tax exemption will be granted to hotels. *[Effective from 1 March 2020 to 31 August 2020]*;
- Expenditure incurred by companies in providing employees with disposable personal protective equipment (“PPE”) such as face masks is deductible under Section 33(1) of the ITA, and non-disposable PPE provided to employees may be claimed as capital allowance.

→ Malaysia

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## Guidelines for the new MSC Malaysia Tax Incentive

### GUIDELINES ON MSC MALAYSIA FINANCIAL INCENTIVES (GRANDFATHERING AND TRANSITION UNDER SERVICES INCENTIVE)

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This Guideline covers the grandfathering, transitional and substantial activities requirements in respect of non-intellectual property income granted to MSC Malaysia status companies under the previous law. Any tax relief period which falling outside the grandfathering period is eligible to be continued under the new MSC Incentive, subject to meeting the conditions of the new MSC Malaysia regime.

### GUIDELINES ON MSC MALAYSIA FINANCIAL INCENTIVES (SERVICES INCENTIVE – INCOME TAX EXEMPTION)

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This Guideline outlines the eligibility criteria and application procedure as follows:

- Applicants with a related company that has been granted exemption from MSC promoted activities will not be eligible for exemption for the same activity;

- Companies are required to comply with an HR requirement of 2 full time employees with a monthly base salary of RM 5,000; and with an annual operating expenditure of RM 50,000 in year 1 and 2 of the exemption period;
- Knowledge worker is defined as an individual with a tertiary qualification in any field; or a diploma in ICT, engineering, technology; or specialized certification plus at least 2 years of relevant experience in a field that is a heavy user of technology; or professional, executive, management and technical work categories in information technology enabled services;
- A detailed description of the core income generating activities qualifying for an MSC Malaysia status is provided in Appendix 1A of the Guidelines;
- Approved companies are required to annually submit audited information or documentation to the Malaysian Digital Economy Corporation (“MDEC”) for compliance verification

→ Malaysia

## Key Employment & HR Highlights: Budget 2020

The theme of the 2020 Federal Malaysian budget was “Driving Growth and Equitable Outcomes Towards Shared Prosperity”. As we are now in the middle of the implementation phase with regard to these changes, below please find some of the employment and HR issues to keep an eye on:

### INCREASED MATERNITY PROTECTION

Effective 2021, maternity leave will be increased from 60 days to 90 days. Working mothers now have 3 months after delivery to care for their new born.

### INCREASE OF MINIMUM WAGE FOR MAJOR CITIES

As of January 2020, the minimum wage of RM1,100 has been increased to RM1,200 in major cities.

### MALAYSIA@ WORK PROGRAMME: WAGE INCENTIVE & HIRING INCENTIVE

	GRADUATES@WORK	WOMEN@WORK*	LOCALS@WORK
Aim	Reduce unemployment of graduates	Encourage women returning to workforce	Incentivizing the shift away from low-skilled foreign workers dependency
Qualifying Criteria	Hire of graduates who have been unemployed for more than 12 months	Women who have stopped working for a year or more, age between 30-50 years	Malaysians hired to replace foreign workers
Employee Wage Incentive	RM 500	RM 500	Either RM 350 or RM 500, depending on sectors
Employer Hiring Incentive	RM 300	RM 300	RM 250
Scope	Payment per month for each new hire for 2 years	Every month, up to two years	Per month for two years

\* Women returning to work will be eligible for tax exemption until 2023.

## IMPROVED PROCEDURES FOR HANDLING SEXUAL HARASSMENT

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No details have been released about what the improvements will be, although initial drafts of the proposed amendments to the Employment Act of 1955 suggest that it will be mandatory for employers to have a written sexual harassment code/policy. Currently, there is no fixed procedure for employers to handle sexual harassment

complaints, aside from a mandatory obligation to “investigate” the complaint.

Failure to do so would be an offence and employers liable for fine not exceeding RM10,000

## ANTI- DISCRIMINATION

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The Employment Act of 1955 to include provisions to prohibit discrimination of employees based on religion, ethnicity and gender amongst others.

Malaysia

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## New Government in Malaysia

Less than two years following the election victory of the centrist Pakatan Harapan coalition led by Dr Mahathir Mohamad, an unexpected political realignment of the political forces in the Malaysian federal parliament ended Pakat Harapan’s spell in government. Following this, Mr Mahathir resigned as Prime Minister on 24 February, but was appointed by the Malaysian king on the same day as care-taker Prime Minister. While exercising his constitutional duties, the king assessed the likely new parliamentary majority and appointed Mahyuddin Yassin within a week of the resignation of Mr Mahathir as the 8<sup>th</sup> Prime Minister of Malaysia.

Mr Mahyuddin, the President of the Bersatu party of which Mr Mahathir is the chairman

and Minister of Home Affairs in the Pakatan Harapan government, now leads a conservative National Alliance (“Perikatan Nasional”) government. Whether Mr Mahyuddin commands a majority of the lower house of parliament will be seen during the first parliamentary session following his appointment, which is most likely to happen in May. The last few weeks of political change show that Malaysia’s constitutional and political system is sufficiently robust to handle an abrupt change of government peacefully and without disruption to the economy.

Malaysia

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## Covid-19 Pandemic – Current Status in Malaysia

### EMPLOYMENT

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The Ministry of Human Resource (MHR) has issued a guideline titled “Guidelines on Handling Issues Relating to Contagious Outbreaks Including Novel Coronavirus” (MHR Guidelines). Although the MHR Guideline does not prescribe any statutory obligations, employers are encouraged to adhere to the same.

- **MEDICAL EXAMINATION:** Employees who have returned from countries with Covid-19 cases should be examined immediately by a registered medical practitioner at the expenses of the employer;
- **PAID SICK LEAVE:** For employees who have been declared unfit to work by a medical practitioner, the employer should provide paid sick or hospitalisation leave as specified in the

respective Employment Contract or the Employment Act 1955;

- **FULL PAY ON QUARANTINED PERIOD:** Employers to provide full pay to employees who receive quarantine orders from a registered medical practitioner upon return from countries with Covid-19 cases (if the employee was there due to official duty or instructions from the employer);
- **NO PROHIBITION FROM ATTENDING WORK IF NO QUARANTINE ORDER RECEIVED:** Employers should not prevent employees from attending work if no quarantine orders are issued by any registered medical practitioner.

However, an employer may instruct an unwell employee to not attend the workplace by providing paid sick leave to the employee;

- **ANNUAL LEAVE OR UNPAID LEAVE:** Employers should not instruct employees to utilise annual leave entitlement or take unpaid leave during the quarantine period if they are issued with a quarantine order. From the legal standpoint, an employer ought to bear in mind that they cannot unilaterally place employees under unpaid leave on the sole basis that the employee is suspected to be infected with Covid-19. Leave on such basis should be treated as paid medical leave.

## HEALTH AND SAFETY

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Employers should also be cautious in sending employees abroad for work to countries affected by Covid-19. An employer's duty is to provide a safe system of work, and if sending employees to affected countries would expose them to health risks, employers were to commit a potential breach of such a duty. All employers are committed to the Common law and the Occupational Safety and Healthy Act 1994 to provide a safe working environment. This includes the implementation of a Health and Safety Policy and practical measures depending on the industry requirements such as increased hygiene procedures.

Employers are required to update their health and safety procedures and to comply with any directives issued by the Ministry of Health.

The following guidelines are to be followed:

- Conduct ongoing risk assessments;
- Promote Covid-19 awareness and steps to prevent infection;
- Limit, defer or cancel travel to areas affected by Covid-19;
- Ensure that employees displaying flu-like symptoms attend a medical professional;
- Identify employees who visited high-risk areas or got in contact with an infected person in order to facilitate contact tracing by health authorities.

## CONTRACT LAW

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Commercial Common Law contracts (including contracts subject to Malaysian Law) frequently contain "force majeure" clauses to define what is to happen to contractual obligations, if these cannot be fulfilled due to an "act of God" or other

circumstances not foreseeable by the parties. It depends entirely on the drafting of the specific clause, whether a pandemic such as Covid-19 will be covered or not. It should be noted that contracts related to finance and banking commonly do not contain such clauses, i.e. a company will still be under the duty to fulfil its obligations towards the bank.

Additionally, a contract might be frustrated under Section 57 (2) of the Malaysian Contracts Act 1950. This applies to scenarios in which subsequently to the signing of the contract it became impossible for a contracting party to fulfil its obligations without this party being able to prevent it. The party recurring to this provision will have to prove that it is not simply more difficult to fulfil its obligations, but literally impossible. Whether a pandemic can make an obligation impossible to fulfil, will depend on the facts of the case. The remedy in case of frustration will be the contract to be considered void, obliging each party to return the benefit already received under such contract.

## PERSONAL DATA PROTECTION

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While all employers are under a duty to create and maintain a safe working environment for their employees, and therefore to protect the employees from Covid-19 infections in the work place, they also have to consider the rights of employees under the Personal Data Protection Act 2020 (PDPA).

Personal data related to health conditions are defined by the PDPA as sensitive personal data. The disclosure of such data is only permitted with the consent of the employee and under some specific very limited circumstances.

Therefore, specific care should be taken while disclosing Covid-19 infections to employees and/or third parties.

## TELECOMMUNICATION LAW – FAKE NEWS

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Spreading of so called "fake news" in connection with the Covid-19 outbreak on social media or through other channels may constitute a criminal offence under the Malaysian Penal Code and/or the Communications and Multimedia Act 1998. Examples of fake news include wrong and/or defamatory statements which lead to public order offences being committed.

## IMMIGRATION – ENTRY RESTRICTIONS INTO MALAYSIA

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All foreign nationals (other than permanent residents and certain long-term visa holders) will be denied entry into Malaysia if during 14 days preceding their entry, they visited one of the following locations or countries:

- Wuhan City, Hubei, Zhejiang or Jiangsu provinces of China;
- Republic of Korea
- Italy
- Iran
- Hokkaido Island, Japan

Further, entry will be denied (all new visa and entry applications) to

- Chinese nationals whose passport is issued in Hubei, Zhejiang or Jiangsu provinces;
- Republic of Korea citizens
- Italian citizens
- Iranian citizens

The restrictions will apply until further notice.

Additional restrictions apply to East Malaysia (Sabah and Sarawak). All foreign nationals and Malaysians not resident in the relevant state will be denied entry if they travelled to China or South Korea within 14 days prior to entry. Long-term visa holders are required to self-quarantine at home for 14 days.

## CONTACT FOR MORE INFORMATION

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## → Myanmar

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### COVID 19 – Quarantine for Foreign Travelers

The Myanmar Government has decided to ban all mass gatherings until April 30, 2020, including all festivities for the Myanmar New Year, Thingyan. Furthermore, the government will quarantine or turn away tourists from Italy, Germany, France, Spain, and Iran. Further countries will be added to this list. While diplomats are allowed to do home quarantine, other travelers will be quarantined in unspecified “facilities”.

Several garment factories have closed down, giving the delay of supply of material ordered from China as reason. Also all pre-schools have been ordered to close immediately. The government is also considering the closure of all schools, meditation centers and cinemas.

Despite the relatively low number of suspected cases, Myanmar authorities, especially the Ministry of Health and Sports, are taking the global outbreak of the coronavirus very serious, and measurements are being ramped up constantly to prevent the virus from entering the country.

Singapore recently sent 3,000 additional COVID-19 testing kits and two polymerase chain reaction machines to Myanmar, and the US Agency for International Development supported the Health Ministry with equipment to protect health workers from patients who display cold or flu-like symptoms.

The impact on the economy is noticeable for the tourism sector already since visa-on-arrival for Chinese tourists are on hold and many Chinese as well as international travellers have cancelled their trips to the Golden Land.

But also the agriculture and garment sector are affected by the suspension of imports and exports to and from China. So far, 13 factories have closed down their operations due to the lack of raw material. International financial institutions do expect a rather slight cut in the GDP by 0.2 percent, though.

→ Myanmar

## Update on Banking, Stock Exchange and Tax

### CENTRAL BANK LOWERS INTEREST RATE

In an attempt to support the economy, the Central Bank of Myanmar has lowered the interests rate by 0.5 percent. As a consequence, the minimum bank deposit rate will be lowered to 7.5 percent from 8 percent, while the maximum lending rate will be lowered to 12.5 percent for collateralized loans, and to 15.5 percent for non-collateralized loans. This marks the first change to the interest rates since September 2011.

### THE MYANMAR PROJECT BANK

The government has officially launched the online project bank for national development projects at the end of February 2020. The project has been funded by the German Federal Ministry for Economic Cooperation and Development (BMZ), and implemented by the German development agency GIZ and Catalpa International. Upon the launch of the website ([www.projectbank.gov.mm](http://www.projectbank.gov.mm)), 58 projects were revealed, accumulating to a total cost projection of just below 19 billion USD.

The projects first listed are in different stages of implementation, outlined in the publicized list. Some projects are new, for others the feasibility studies are currently being undertaken, and some are already being implemented.

The project bank shall serve as an online one-stop-shop, where all information on projects designed to implement the Myanmar Sustainable Development Plan can be easily accessed with a single click, and a transparent system to assure appropriate financing of the national development projects.

### YANGON STOCK EXCHANGE - FOREIGN TRADING

According to an announcement of the Securities and Exchange Commission, resident and non-resident foreign investors will be allowed to trade on the Yangon Stock Exchange (YSX) as of 20 March 2020. YSX opened in March 2016, and currently lists five companies which will be joined by a sixth company, Everflow River Group, on March 20 2020.

### BANK ASSURANCE

On March 4 2020, the Insurance Business Regulatory Board allowed for banks and microfinance institutions to operate as agents selling insurance products from licensed insurance companies after obtaining approval from the Central Bank of Myanmar and the Microfinance Business Supervisory Committee.

### NEW INSOLVENCY LAW ENACTED

On February 14, 2020, Myanmar passed a new Insolvency Law. The legal reform was funded by the Asian Development Bank as part of its technical assistance to Myanmar. The purpose is to strengthen the legal and institutional framework of Myanmar. The law replaces the outdated Yangon Insolvency Act from 1909 and the Myanmar Insolvency Act from 1920 and was highly anticipated. The new legislation adopts UNCITRAL Model Law on cross-border insolvency.

Both, private and corporate insolvency are covered by the new law. Companies may choose between a liquidation or rehabilitation process which requires the engagement of an insolvency practitioner.

### MTO 2 WILL OFFER SELF-ASSESSMENT STARTING FROM OCTOBER 2020

In February 2020, the Internal Revenue Department (IRD) announced the implementation of the self-assessment system (SAS) for the Medium Taxpayers' Office (MTO-2) by 1 October 2020. The change to the SAS is regarded as one of the most important reform steps for the modernization of the tax administration and part of the continuing tax reform.

First, the Large Taxpayers' office (LTO) was initiated as a pilot project with 500 taxpayers more than 5 years ago, and in the fiscal year of 2017-18 the Medium Taxpayers' office (MTO-1) followed with an additional 700 taxpayers. By the end of January 2020, the LTO and MTO-1 had increased the SAS taxpayers to 946 and 1847 respectively.

"Internal Revenue Department will duly communicate with the taxpayers to make sure that

information on the benefits, obligations and requirements of the self-assessment system are delivered to the taxpayers in a timely manner.” (IRD)

## CENTRAL BANK – CHANGE OF REQUIREMENTS FOR FOREIGN LOANS

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The Central Bank of Myanmar has announced to change the requirements for foreign loans. All foreign loans for Myanmar residents do require the prior approval of the Central Bank. While

previously all companies had to show an equity capital of more than 500,000 USD before they were allowed to apply for financing from abroad, this requirement is only upheld for companies operating with a permit from the Myanmar Investment Commission (MIC-Permit).

For all companies operating without a MIC-Permit, it is now sufficient to show an equity capital of more than 50,000 USD. This significantly eases the access to foreign loans as the restriction includes shareholder loans.

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## → Philippines

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### CITIRA: Corporate Income Tax and Incentives Reform Act

For more than a year, the Philippine and international business community has been waiting for the next phase of the Philippine Comprehensive Tax Reform Program to be implemented, after

- Package 1 (19 December 2017);
- TRAIN I – Tax Reform for Acceleration and Inclusion, focusing primarily in personal income tax matters;
- Package 1B (14 February 2019);
- Tax Amnesty Act;
- Package 2+ (2019/2020);
- Various amendments to the legislation to increase the “sin taxes” on tobacco and alcohol.

The initial draft of the Corporate Income Tax and Incentives Reform Act (CITIRA), previously

also known as TRAIN II or TRABAHO has been passed by the House of Representatives on 10 September 2019. On 19 February 2020, the Chairman of the Senates’ Ways and Means Committee, Senator Pia Cayetano, presented the Senates’ version for deliberations. We are happy and proud that as participants to the consultation of the German-Philippine Chamber of Commerce and Industry, Rödl & Partner could also directly contribute to the drafting process of the committee report. The bill is currently pending before the Senate’s plenary. On 9. March, President Duterte certified the CITIRA bill as urgent. This measure would have pathed the way for the Senate to fast-track the bill before the recess of Congress from 14 March to 3<sup>rd</sup> May 2020. However, due to the Corona-Virus calamity the legislative has not been able to address the matter further.

Once approved by the Senate, the bill will then be subject to negotiations at the Bicameral Conference Committee of Congress before its transmittal to the President.

During the past year(s) the reform package has been extensively deliberated, praised and criticized at the same time. Below please find a brief summary of the key terms of this legislative mega project.

## SUMMARY OF PROPOSED LEGISLATIVE AMENDMENTS:

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With 30 percent, the Corporate Income Tax in the Philippines is currently amongst the highest in ASEAN. The Senate Committee Report provides for a flexible Corporate Income Tax rate starting at 29 percent, and decreasing annually by 1 percent until 2029 (reaching 20 percent). The business community advocated for a fast or more significant reduction of the CIT in the first years. However, the Department of Finance argued that by doing so, significant tax income for the Philippines would be lost.

The key discussion point of CITIRA evolves around Philippine investment incentives. All stakeholders involved seem to agree that the fairly old framework of incentives should be modernized. However, significant reservations against the newly proposed framework were addressed by the business community arguing that the current proposed framework would reduce existing incentives, that the new incentives would not be competitive enough in an international

competition of places of investment, and that the new law would browbeat companies that made significant long term investment decisions relying on the current regulations etc.

Currently, companies registered under the Philippines Economic Zone Authority or the Bureau of Investment may get 4 to 6 years of Income Tax Holidays (ITH), and thereafter they may enjoy a reduced tax rate of 5 percent.

According to the new framework, the number of years for ITH for existing investors will depend on how long they have already benefited from the existing incentives and/or on the following factors:

- 2 years, if they have been benefiting from the incentive for more than 10 years;
- 3 years, if they have been benefiting from the incentive between 5-10 years;
- 5 years, if they have been benefiting from the incentive for less than 5 years;
- 7 years, if the activity is qualified under the following conditions:
  - 100 percent export-oriented; or
  - Employment of more than 10,000 Filipinos; or
  - Highly footloose activities

The Senate's version furthermore provides for enhanced deductions for depreciation allowances of 30 percent, for investments in labor and education etc. of up to 150 percent.

→ Philippines

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## Covid-19 – Development of the Coronavirus in the Philippines

The events regarding the Coronavirus have been taking summersaults lately. While on 2 February 2020, the Philippines appeared in the international press with the first fatality due to COVID-19, the confirmed cases remained comparably low. However, since the beginning of March, the cases and fatalities increased exponentially. As of 17 March 2020, the Philippine records 142 confirmed cases and 12 deceased. This caused the Philippine President to declare the State of Public Health Emergency on 8 March, almost immediately

followed by a general Quarantine for Metro Manila announced on 12 March, tightened by enhanced quarantine measures for Metro Manila, Luzon and selected areas on 16 March.

More details on the general quarantine measures, social distancing and Guidelines of the Department of Labor and Employment may be found at in the Rödl & Partner [Article Series](#).

The enhanced measures announced on 16 March include:

- A strict home quarantine to be observed in all households with movement to be limited to basic necessities;
- Private establishments for utilities, transport of food and goods and other necessities shall remain open; for all other establishments home-office is recommended and restrictions may apply with regard to the operations of such enterprises;
- home-office arrangements also apply for the executive branch, and only a skeleton workforce may provide key services - unless the executive branch is part of the key responders to the crisis;
- Outbound travel shall be allowed for another. 72 hours; for inbound passengers, strict control measures and quarantine rules apply;
- Please note: Currently the Philippines does not allow the entry of passengers from China, Hong Kong and Macau. Passengers from the Philippines may be denied entry in Saudi Arabia, Qatar and Kuwait.

→ Philippines

## Fitch's rating

On 11 February, debt watcher **FITCH RATINGS** raised its outlook on the country due to its "very strong" macroeconomic base to "**BBB POSITIVE**". This is a very important and big step towards its first A credit rating which would further open up credit for the country by lowering interest rates from commercial creditors.

According to Fitch, the outlook revision reflects "its expectations of continued adherence to a sound macroeconomic policy framework that will support high growth rates with moderate inflation, progress on fiscal reforms that should keep government debt within manageable levels, and continued resilience in its external finances."

Fitch expects the Philippines to remain among the fastest growing economies in the Asia-

Pacific region in 2020/2021, even performing well above the current BBB median. Fitch has projected economic growth to accelerate to 6.4 percent and 6.5 percent in 2020 and 2021, respectively, also referring to the country's improved Ease of Doing Business ranking from 124 to 94.

The credit profile of the Philippines according to **MOODY'S** is characterized by "A3" economic strength, which balances robust economic growth and large size as compared to peers against low GDP per capita.

**STANDARD & POOR'S** credit rating for the Philippines is BBB+ with stable outlook.

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## → Singapore

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### Geographical Indications in Singapore

Geographical Indications (“GI”) are specific labels for products - typically foodstuff, beverages and agricultural products - which inform consumers about these products’ geographical origin, indicating certain qualities or conveying a certain reputation. Well-known examples are the German sausages “Nuernberger Rostbratwuerste”, the French cheese “Roquefort” or the Italian wine “Chianti”.

In Singapore, the protection of GIs is governed in the Geographical Indication Act 2014 (“GIA”). The GIA was passed by the Singapore Parliament in April 2014 in the light of the European Union-Singapore Free Trade Agreement (“EUSFTA”). The GIA came into force partially on 1 April 2019. Further parts of the GIA became effective on 21 November 2019, when the EUSFTA entered into force. Part VI of the GIA, which governs the border enforcement measures, will - in line with the obligations of Singapore under the EUSFTA - become effective within three years from 21 November 2019.

The GIA replaced the previous Act from 1998, which was based on the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) standards. One of the main differences between the TRIPS-based Act and the GIA is the new registration system which will complement the protection of unregistered GIs through court rulings. In general, registered GIs benefit from a higher standard of protection. Producers,

associations of producers and competent authorities responsible for a particular GI are entitled to apply for a registration with the Intellectual Property Office of Singapore (“IPOS”). Amongst others, the application to IPOS must show that the GI is already protected in the country of origin.

The GIA will be technically amended through the Geographical Indications (Amendment) Act 2020, which has been passed by the Parliament on 3 February 2020. Amongst others, the amendment defines and clarifies the treatment of variants of GI. Furthermore, the process of entering a qualification to specify the scope of protection has been changed.

The protection of GI in Singapore and the further adjusted legal framework are highly relevant for producers of foodstuff, beverages and agricultural products originating from the European Union. Currently, there are almost 150 GIs from member states of the European Union registered in Singapore. The GIA might not only raise awareness of the sophisticated consumers of Singapore to products with specific geographical origins, but could also serve as a showcase of these products for the ASEAN region. Singapore on the other hand, even though it does not have any notable industry which would benefit from an improved protection of GI, may further develop its Intellectual Property (“IP”) landscape which might support its intention to be the IP hub of Asia.

→ Singapore

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### Reactions to the Corona Pandemic

#### TRAVEL BAN

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Visitors - who are not Singapore citizens, permanent residents or long-term pass holders - with travel history to mainland China, the Republic of Korea, northern Italy, and Iran within the last 14 days will not be allowed entry into Singapore, or transit through Singapore. The issuance of all forms of new visas and previously issued visas to those with People's Republic of China (PRC) and Iranian passports have been suspended.

As of 15 March 2020, visitors, who are not Singapore citizens, permanent residents or long-term pass holders, with a travel history to Germany, France, Italy and Spain within the last 14 days will not be allowed to enter into or to transit through Singapore.

#### STAY-HOME NOTICE

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Singapore citizens, permanent residents and long-term pass holders with travel history within the last 14 days to mainland China (outside of Hubei), Republic of Korea, northern Italy, and Iran are

subject to a Stay-Home Notice (“SHN”). These individuals are not allowed to leave their residences for any reason for 14 days. Random checks will be carried out by the Singapore Immigration and Checkpoints Authority and the Ministry of Manpower (MOM).

As of 15 March 2020, this applies to Singapore citizens, permanent residents and long-term pass holders with travel history within the last 14 days to Germany, France, Italy and Spain.

As of 16 March 2020, all travelers (including Singapore Residents, Long Term Pass holders, and short-term visitors) entering Singapore with a recent travel history to ASEAN countries, Japan, Switzerland, or the United Kingdom within the last 14 days will be issued with a 14-day Stay-Home Notice (SHN), being required to provide proof of the place where they will serve the 14-day SHN. They may also be swabbed for testing for COVID-19, even if asymptomatic.

In addition to the SHN requirement, from 16 March 2020, all short-term visitors who are nationals of any ASEAN country will have to submit information on their health to the Singapore Overseas Mission in the country they are resident prior to their intended date of travel. The submission will have to be approved by Singapore’s Ministry of Health (MOH) before travel to Singapore, with this approval being verified by the Immigration and Checkpoints Authority (ICA) officers at the Singapore checkpoints. Short-term visitors who arrive in Singapore without the necessary approval will be denied entry into Singapore.

The Ministry of Manpower (MOM) will also introduce new measures for Foreign Domestic Workers entering Singapore. More details will be announced by MOM.

## CONTACT FOR MORE INFORMATION

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## → Thailand

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### Update on the Land and Building Tax

#### GENERAL INFORMATION

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In March 2019, the new Land and Building Tax Act came into effect, and tax will be collected according to the new provisions for the first time in 2020. Legal and natural persons are subject to the tax if they own or possess land or buildings. The tax is based on the appraised value of the land or building.

The effective tax rate will be stipulated separately, whereby the Land and Building Tax only stipulates maximum rates as follows:

- Agricultural use: max 0.15 percent )actual rates range from 0.01 to 0.1 percent(;

- Residential use: max 0.30 percent )actual rates range from 0.02 to 0.1 percent(;
- Other use: max 1.2 percent )actual rates between 0.3 to 0.7 percent(;
- Vacant or unused: 1.2 percent )actual rates between 0.3 to 0.7 percent(; subject to an increase of 0.3 percentage points each three years of vacant or unused status up to a maximum of 3 percent(.

## DATE OF TAX COLLECTION

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According to the law, tax should be collected in April 2020. Now, the government has announced though that the tax will be collected in August 2020.

## DEFINITION OF VACANT PROPERTY

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The government has defined the term “vacant property” as “left vacant”, “not properly used”, or “not reasonably used”. In general, a property will be considered vacant if it has not been used for the assigned purpose for the past tax year.

A building is considered vacant, if it could be used for the respective purpose, yet has not been used for it during the past tax year. However, it will not be considered vacant during construction, if the usage of the building has been forbidden by a court, or if the title of the property is under review by a court. A land is not considered vacant during the preparation for the assigned use.

deductions and exemptions for individual owners of land and buildings

For individuals, certain deductions can be made for land and buildings with residential use. Moreover, tax exemptions apply to owners of land and buildings worth up to THB 50 million and owners of buildings worth up to THB 10 million if they are registered as of 1 January in the house registration book in any given tax year.

Individual owners of land with agricultural use worth up to THB 50 million may also apply for a tax exemption.

Additionally, individual owners using land or buildings for agricultural use will be exempted from tax collection under the act for three years.

## INSTALLMENTS

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Taxpayers owing at least THB 3,000 in land and building tax are eligible to payment in three equal installments in April, May and June of each year

→ Thailand

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## Submission of Financial Statements

Effective 1 January 2020, companies are required to submit financial statements to the Department of Business Development electronically via the DBD’s e-filing system. Submitting the statements

as hard copy only is no longer sufficient. Late or incomplete submissions are subject to fines.

→ Thailand

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## Personal Income Tax

The Ministry of Finance proposed to extend the deadline for filing personal income tax by three months to June of each year. The proposal shall reduce the payment burden on the individual tax payer and is said to not impact the overall fiscal solidity of Thailand.

Effective end of 2019, the tax benefits of Long Term Equity Funds (LTF) have expired. However, investors may still buy LTFs and apparently the government plans to introduce legislation to waive taxes on capital gains (but investments will no longer be tax deductible. Instead, the government has agreed on a the new Super Savings Funds (SSF). Investments in SSFs are tax-deductible up to 30 percent of the

investor’s income with a cap at THB 200,000. If combined with other tax-effective investments (e.g., Provident Fund, Retirement Mutual Funds, etc.) the maximum amount deductible is THB 500,000. Unlike the previous LTFs, investors will have to hold SSFs for at least 10 years to benefit from tax breaks on the capital gains.

→ Thailand

## Interest Rate

The Monetary Policy Committee of the Bank of Thailand decided decision 1/2020 to cut the interest rate by 0.25 points to 1.00 percent. The change took effect on 5 February 2020. The Committee reasoned that an economic slowdown – partly induced by a drop in the tourism sector

due to the recent Coronavirus outbreak – could affect the financial stability of the country. Furthermore, the Committee pointed to the need for debt restructuring of businesses and households. Cutting the interest rate will accommodate these needs.

→ Thailand

## Minimum Wage

Effective from 1 January onwards, the Wage Committee has issued new minimum wages. The former wages notification was repealed. The wage differs depending on the province:

MIN WAGE (ILY RATEDA, THB)	PROVINCE
336	Phuket, Chonburi
335	Rayong
331	Bangkok, Nonthaburi, Nakorn Pathom, Pathum Thani, Samut Sakhon, Samut Prakan
330	Chachoengsao
325	Ayutthaya, Krabi, Nakorn Ratchasima, Phang Nga, Lop Buri, Saraburi, Songkla, Suphan Buri, Sarat Thani, Nong Khai, Ubon Ratchathani, Khon Kaen, Chiang Mai, Trat
324	Prachin Buri
323	Sakon Nakhin, Mukdahan, Kalasin, Chathaburi, Nahkon Nayok, Samut Songkram
320	Kanchanaburi, Nakhon Phanom, Surin, Nakhon Sawan, Nan, Bung Kan, Prachuap Khiri Khan, Phattalung, Phitsanulok, Phetchaburi, Phetchabun, Phayao, Buri Ram, Chai Nat, Yasothon, Roi Et, Sa Kaeo, Ang Thong, Udon Thani, Uttaradit, Loei
315	Chumphon, Chiang Rai, Mae Hong Son, Kamphaeng Phet, Chaiyaphum, Trang, Tak, Nakhon Si Thammarat, Phichit, Maha Sarakham, Phrae, Ranong, Ratchaburi, Lampang, Lamphun, Satun, Sing Buri, Sukhothai, Nong Bua Lam, Si Sa Ket
313	Pattani, Narathiwat, Yala

Companies should check and adjust salaries if necessary.

→ Thailand

## Future Forward Party disbanded

The Future Forward Party founded in 2018 was disbanded by the Constitutional Court on 21 February 2020. In the 2019 election, the Future Forward Party won 81 seats in parliament and achieved about 17.6 percent of the overall vote. The Constitutional Court ruled that the party violated the election laws with regard to donations. The Constitutional Court revealed that the party had received a loan of THB 191 million (approx. EUR

5.45 million) from the party leader but counted the loan as donation.

Furthermore, the Constitutional Court banned 16 members of the party from engaging in politics in Thailand for 10 years, including the founder and leader of the party.

→ Thailand

## Covid-19 in Thailand

As of 10 March 2020, Thailand has recorded 53 COVID-19 cases: 33 of the patients have recovered, 19 are still in hospitals, and one has died.

### LEGAL BASIS AND IMMIGRATION LAWS

On 1 March 2020, COVID-19 was qualified as a “Dangerous Communicable Disease” under the Communicable Disease Act (CDA). The CDA permits measures to prevent the spread of communicable diseases in Thailand (e.g. ordering of disinfections, closures of buildings and vehicles, examinations, quarantines, and isolations).

By a Notification dated 2 March 2020 (Notification of the Ministry of Public Health RE: Territories outside the Kingdom of Thailand defined as Disease Infected Zones of the Coronavirus Disease 2019 (COVID-19) Outbreak B.E. 2563) Iran, Italy, South Korea, China, Hong Kong, and Macau have been qualified as “Disease Infected Zones.” As a security measure, travelers from these countries can be asked to undergo medical examinations upon arrival. In case the test is positive, further measures (quarantine, isolation) can be imposed. Everybody is obliged to make truthful statements to badged health officials regarding their recent travel history. According to the Ministry of Public Health, providing wrong information to a health official will be fined with THB 20,000 per case.

On 9 March 2020, the Civil Aviation Authority of Thailand issued guidelines regarding COVID-19. Airlines are requested to only permit the check-in of travelers from “Disease Infected Zones” if they can provide a health certificate confirming that they are not affected by COVID-19. Additionally, before immigration to Thailand, travelers will have to fill in the T8 form, which

provides information on travel history. Incorrect information will be fined.

Airlines are obliged to bear the costs of isolation, quarantine and other health costs in case of confirming COVID-19 of a traveler arriving in Thailand.

There are particular rules for Thai people returning from work in South Korea (so-called Phi Noi, “Little Ghosts“). This group of returnees shall be subject to a 14-day quarantine on dedicated military facilities.

In practice, all travelers are currently checked on temperature by thermal imaging cameras at the airport. If the body temperature exceeds 37.5 degrees, further medical examinations can be ordered, regardless of the destination.

### EXPORT REGULATIONS

Thailand limited the export of face masks and other safety equipment requiring an export permit. Additionally, the Minister of Economics introduced measures to control the retail price, export, import, and the sales volume of face masks. The goal is to prevent hoarding and excessive pricing. As a consequence, all main manufacturers of workplace safety equipment have to deliver their face masks to the government, which will distribute to hospitals and pharmacies to ensure sufficient supply.

Furthermore, the Thai Central Committee for product and service prices fixed the price at THB 2.5 per item. Infringement will be fined up to THB 140,000 or up to seven years of imprisonment.

## LABOR LAW

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In general, the Work Safety, Occupational Health, and Environmental Committee has the authority to request employers to introduce measures to ensure workplace safety. As of 11 March, the Committee has not issued any rules yet.

However, many companies are following the WHO recommendations by handing out face masks to employees, providing disinfection, and information about the prevention of COVID-19.

Employees ordered to self-quarantine by public health officials and showing symptoms such as fever etc. are considered sick and have to take sick leave. In general, employees are entitled to 30 days of paid sick leave per year. However, if the employer closes the office as a precaution or orders an employee to stay at home without the employee showing any symptoms, then the employee does not have to take sick leave.

In general, employees in Thailand are not entitled to “home office” under the law. However, in practice, many companies are preparing employees to work from home, if possible.

## AVERT OF FALSE INFORMATION

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The Technology Crime Suppression is tasked to take steps against false information under the Computer Crime Act. People spreading false information on the internet will be subject to fines and/or imprisonment.

## CONTACT FOR MORE INFORMATION

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## STIMULUS

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The Ministry of Finance has announced a stimulus to support the economy in the amount of THB 400 billion (approximately EUR 11,5 billion).

The Government Savings Bank will set-up a soft loan program worth THB 150 billion. The GSB will grant loans of up to THB 20 million at a rate of two percent.

The Social Security Office announced another loan program with a volume of THB 30 billion for entrepreneurs. These loans shall support employment, and the interest rate shall be around three percent.

Furthermore, the Ministry of Finance has announced a reduced withholding tax rate (reduced from 3 percent to 1 percent) on certain payments by companies for the period from April to September 2020. Additionally, small and medium-sized enterprises shall be allowed to deduct the costs of employment at a factor of three from April to June.

Furthermore, the tax incentives for investments in Super Saving Funds shall be increased to support companies listed on the Stock Exchange of Thailand.

The Bank of Thailand announced measures to ease debt restructuring for companies in Thailand affected by the economic slowdown.

## → Vietnam

### Legal update on the Labor Code 2019

#### KEY ISSUES

On 20 November 2019, the National Assembly of the Socialist Republic of Vietnam enacted the new Labor Code (the “**Labor Code**” or the “**Code**”) which shall enter into full force and effect as of 1 January 2021, replacing the Labor Code 2012 (the “**current Code**”). We would like to emphasize that from the effective date of the new Labor Code, the labor contracts, collective labor agreements and lawful agreements which are valid under the current Code and are not contrary to the new Code or do provide rights and conditions which are more in favor of the employees than stipulated by the provisions under the current Code, shall continue to be valid unless the parties agree to amend them in order to fully comply with the provisions under the new Code.

Below please find a survey of the most significant changes to the rights and obligations of both, the employee and the employer, prescribed by the new Code:

#### AMENDMENT TO LABOR CONTRACT REGULATIONS

##### 1. DEFINITION OF LABOR CONTRACT:

In addition to the definition of a clear-cut labor contract, the new Code does also provide regulations for the recognition of further employment agreements regardless of their individual nature and designation (such as service contract, freelancer contract, etc.). Consequently, any agreement concluded between the parties containing paid work, salary and management, administration, supervision of one party shall be deemed a labor contract, regardless of the name given to the agreement.

##### 2. FORM OF LABOR CONTRACT AND MAIN CONTENTS OF A LABOR CONTRACT:

While the current Code provides for a labor contract to be concluded in writing, except for contracts covering a term of less than 3 months which may be concluded either in writing or in oral form; the new Code stipulates that a labor contract has to be concluded in writing unless it covers a contract term of less than 1 month, in which case it may be concluded either in writing or in oral form (except for some special cases). The new Code

does additionally provide that a labor contract concluded by electronic means conformable with the prevailing electronic transaction laws shall have the same value as a physical contract.

A labor contract must contain the main contents as prescribed under Article 21 of the new Code.

##### 3. TYPE OF LABOR CONTRACT, ANNEX TO LABOR CONTRACT AND PROBATION TIME:

While the current Code does provide 3 types of labor contracts of (i) indefinite-term; (ii) definite-term from 12 – 36 months; and (iii) seasonal labor contracts with terms of less than 12 months with the latter not being permitted for regular jobs, the new Code only provides 2 contract types: (i) indefinite-term labor contracts and (ii) definite-term contracts with a term of up to 36 months. The parties may only conclude a definite-term contract twice during a consecutive employment relationship and are obliged to enter into an indefinite-term contract upon the 3rd contract of consecutive employment relation, except for the following specific cases: (i) elderly employees; (ii) foreign employees; and (iii) contract with members of the trade union executive board. Attention should be paid to the fact that the new Code clearly stipulates that the term of the labor contract with a foreign employee may not exceed the duration of the granted work permit. In fact this used to cause quite some controversy confusion under the yet unclear regulation of the current Code.

The parties may add one or more annexes to the labor contract in order to provide details, amendments or supplements to the content of the signed contract, while they may not amend the agreed contract term, though.

The parties may agree for the probation period to be either included in the labor contract or to be subject to a separate probation contract. As a significant change, the new Code provides that in addition to the probation time frames of 60 days, 30 days and 6 days, respectively, the probation period for management positions shall not exceed 180 days.

##### 4. TERMINATION OF LABOR CONTRACT

In addition to the cases provided under the current Code, the new Code also allows for the labor contract to be terminated in case: (i) a foreign employee working in Vietnam is expelled pursuant

to an effective verdict or judgment of the court or a decision of a competent authority; (ii) the employer terminates the labor contract in accordance with Article 42 and Article 43 of the Code; (iii) the work permit of a foreign employee expires according to Article 156 of the Code; (iv) the employee fails to perform his/her tasks during the probationary period under the employment contract or gives up the probation.

Just as provided by the current Code, the parties may still unilaterally terminate the labor contract in certain cases. Furthermore, the new Code enlarges the rights of both, the employees and the employers, for a unilateral contract termination, providing the following:

#### a. Unilateral termination of a labor contract by the employee

Except for certain specific jobs as regulated by the Government of Vietnam, the employee only needs to provide an advance notice in due time in order to exercise the termination right for all three types of labor contracts: (i) at least forty-five days' advance notice if working pursuant to an indefinite term labor contract; (ii) at least thirty days' advance notice if working pursuant to a definite term labor contract with a duration of 12 months to 36 months; (iii) at least three days' advance notice if working pursuant to a definite term labor contract with a duration below 12 months.

In addition, to protect the employee from a violation on the part of the employer (except for point (v) and (vi) below), the Labor Code also stipulates specific cases in which the employee has the right to immediately terminate the labor contract unilaterally without giving a prior notice: (i) the employee is not assigned to the correct job or workplace or the working conditions agreed in the labor contract are not ensured; (ii) the employee is not paid the wages due in full or on time; (iii) being mistreated, beaten or being insulted by acts or verbalism or being challenged by the employer to execute activities which affect the health, dignity or honor or is subject to labor coercion; (iv) being sexually harassed in the workplace; (v) a female employee is pregnant and needs to rest upon instructions from a competent medical diagnostic or assessment establishment; (vi) the employee has reached the retirement age; (vii) the employee provided incorrect information as regulated by the Labor Code which affect the performance of the labor contract.

The new regulations fixed the inadequacy of the current Code, under which the employee still had to work for the employer until the end of the advance notice period, although being sexually harassed. Furthermore, for the first time, the definition of "sexual harassment" has

been clearly recorded in a law "Sexual harassment in the workplace means conduct of a sexual nature by any person to another person in the workplace without the latter's wish or consent. Workplace means any place where an employee actually works pursuant to the agreement with or assignment by the employer."

#### b. Unilateral termination of labor contract by employer

The Labor Code extends the range of circumstances under which the employer may unilaterally terminate the labor contract from four to seven cases; these are the three additional circumstances: (i) the employee has reached the retirement age; (ii) the employee arbitrarily leaves the job without a satisfactory explanation for a period of at least five consecutive working days; (iii) the employee provided false information when entering into the labor contract and this fact adversely affected the recruitment of employees.

In case the employees do not return to work after the expiry of a suspension of performance of the labor contract or when they leave the job without a satisfactory explanation as mentioned above, the employer has the right to terminate the contract without prior notice.

#### MORE FLEXIBILITY UPON SETTLING A LABOR DISPUTE

The new Code provides enhanced flexibility with regard to the choice of a labor dispute settlement mechanism. Particularly, in addition to inheriting the provisions under the current Code on the statute of limitations for request, respectively the labor mediator and the Court to settle individual labor disputes, the new Code has added provisions on the statute of limitations for requesting a labor dispute settlement by the Labor Arbitration Council, which is 9 months as of the date on which a party identifies the infringement of their lawful rights and interests.

Further to that, the new Code also takes provisions for those cases in which the claimant may prove that he/she is unable to submit the request within the stipulated time limit due to a force majeure event, an objective obstacle or other reasons defined by law. The time consumed by force majeure events, objective obstacles or reasons defined by law shall not be included in the statute of limitations for requesting personal labor disputes.

This is a remarkable addition, because the current Code only stipulates the statute of limitations for requesting a labor dispute resolution, without giving room for exceptions.

## NEW REGULATIONS ON ORGANIZATION OF EMPLOYEES AT ENTERPRISES

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The Labor Code sets forth new regulations on the Organization of Employees at Enterprises (“ORGANIZATION OF EMPLOYEES”) which is an independent organization with the Vietnam General Confederation of Labor. The Organization of Employees may be lawfully established and start operating after the competent State agency has issued its registration. Together with the Trade Union, these are the two types of organization representing the employees at the grassroots level. Nonetheless, the Organization of Employees does not have as many levels as the Trade Union but is limited to the company itself.

The Organization of Employees has its own Charter and board of management, members must be employees of the company. The Organization of Employees and the Trade Union at grassroots level are equal regarding the rights and obligations to represent the lawful rights and interests of employees in the labor relationship.

Currently, the Labor Code does not provide too many detailed information for the Organization of Employees, thus, the employees will have to wait for further guiding from a Decree of the Government, Circular or other types of documents from the relevant authorities to know the application dossier, procedures and steps to establish the Organization of Employees.

## CONTACT FOR MORE INFORMATION

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## FURTHER CHANGES TO PUBLIC HOLIDAYS, RETIREMENT AGE AND OVERTIME WORKING HOURS

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The Labor Code supplements an additional day off for National Day (2 September plus one preceding or following day). This would result in a total of 11 public holidays. The Labor Code also states that the Prime Minister will have the competence to decide the specific day off for Tet and National Day of each year.

As from 1 January 2021, the retirement age of an employee in normal labor conditions shall be 60 years, 3 months for a male, and 55 years, 4 months for a female. Thereafter, the retirement age shall be increased on a yearly base by 3 months for men and by 4 months for women until 2028, when the retirement age will have reached the age of 62 for men, and until 2035 respectively, when the retirement age will have reached the age of 60 for woman. The current retirement ages are 60 years for men and 55 years for women.

The overtime working hours have been increased from 30 to 40 hours/month. The total overtime hours in one year remain unchanged.

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

## → 3<sup>rd</sup> ASEAN Forum Singapore postponed

In light of the latest developments and the risk assessment being risen to DORSCON Orange by the Singaporean government as of February 8, we decided to postpone our ASEAN Forum in Singapore duly accepting our responsibility to safeguard the health and safety of our guests and our colleagues alike.

We will schedule a new date as soon as the situation allows for it, hoping that we will have the pleasure to welcoming you as our guests under more fortunate circumstances.

It will be our pleasure to keep you updated.

**LOOKING FORWARD TO WELCOMING YOU ABOARD!**

**CONTACT FOR MORE INFORMATION**



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