



NISHIMURA & ASAHI

Third Quarter 2021 (July - Sept.)



SOUTHEAST ASIAN LEGAL UPDATE

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1. Reclassification of Licenses of Payment Service Providers

Indonesia Central Bank (*Bank Indonesia* – “**BI**”) recently issued BI Regulation No. 23/6/PBI/2021 on Payment Service Providers, to be effective in conjunction with BI Regulation No. 22/23/2020 (both came into force on 1 July 2021), replacing previous regulations issued by BI on, among others, e-money, financial technology, payment transactions processing, and fund transfers.

BI Regulation No. 23/6/PBI/2021 reclassified various activities related to payment service providers into three groups for the purposes of licensing, with type 1 license covering the broadest range of activities, among others, administration of source of funds, payment initiation, acquiring services, and remittance services. The reclassification of licenses is linked to the minimum capital requirements, with type 1 license having the highest capital requirement compared to those type 2 and type 3 licenses.

Restrictions under BI Regulation No. 22/23/2020, such as the 85%-foreign-share-ownership limitation and the majority voting right restrictions for foreign shareholders of Non-Bank Institutions (NBI), are consistently re-emphasized by this regulation. The regulation also sets out further restrictions that parties need to be aware of, such as the local domicile requirement for at least one director of NBI.

2. Introduction of Digital Bank – New Opportunities in Banking Sector

On 30 July 2021, Indonesia Financial Services Authority (*Otoritas Jasa Keuangan* – “**OJK**”) issued a new OJK Regulation POJK 12/POJK.03/2021 to, among others, update the rules on commercial banks and introduce a new form of commercial banks, namely digital banks (i.e., commercial banks carrying on banking business mainly through electronic channels without having comprehensive physical offices network typically required for conventional commercial banks).

The regulation is set to be effective on 30 October 2021 (i.e., 3 months after its enactment date). Clients interested in operating a digital bank can explore the possibility of establishing a new legal entity or transforming an existing (non-digital) commercial bank to be a digital bank.

3. Enhancement of Business Licensing System – Increase of Ease of Doing Business Level

As of 2 August 2021, Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* – **BKPM**) finally implemented the risk-based assessment licensing through the ‘updated’ online single submission (OSS) system.¹ The updated system is expected to not only provide a seamless experience for companies to register their businesses but also give them a clearer understanding of the legal and administrative requirements to obtain the required licenses - as the system is now able to show information, such as the requirements set out under relevant business classifications (locally known by its abbreviation, ‘KBLI’), the relevant foreign ownership limitation (if any), the required procedures, as well as the estimated timeline for the license application process. The Indonesian government expects this will eventually lead to improved transparency in the licensing process.

4. Enhancement of Fiducia Security Registration System

Following the issuance of Minister of Law and Human Rights Regulation No. 25 of 2021 on technical guidelines for fiducia registration and deregistration, the fiducia security registration system is now accessible and can be used by the public (compared to the previous system which was accessible by Indonesian public notaries only). The improved registration system also introduced a feature that enables parties to make revisions to certain administrative data that are mistakenly recorded in a fiducia security certificate.

The improved registration system is expected to provide a better and more efficient infrastructure for financing practices in Indonesia.

¹ Please refer to our previous newsletter issued in the 1st Q of 2021 for the description of risk-based licensing reformation.

1. COVID-19 Measures

A number of developments in the law in relation to COVID-19 have been implemented in light of the transition towards COVID resilience and the subsequent restricted community measures put in force between 27 September to 24 October 2021 to scale back social interactions to slow down community transmissions and allow for better stability. This includes (a) work-from-home being the default work arrangement and encouraging employees who work at the work premises to self-test weekly via Antigen Rapid Test, (b) the extension of the waiver of foreign worker levies for S Pass and work permit holders for the duration of their stay-home notice periods to the end of the year, and (c) support for property developers who face construction delays due to COVID-19 and are unable to meet the delivery date of possession in the Sale and Purchase Agreements entered into with purchasers - developers may serve a notice on purchasers for the extension of the date of delivery of possession by up to 122 days.

2. Amendments to the Banking Act (Cap. 19 of Singapore) (“Banking Act”)

Amendments to the Banking Act pursuant to the Banking (Amendment) Act (No. 1 of 2020) came into force on 1 July 2021. The amendments include (a) the removal of the divide between the Domestic Banking Unit and the Asian Currency Unit (as previously banks had to maintain both of these accounting units) (b) the expansion of the grounds for the revocation of a bank licence including where the Monetary Authority of Singapore (“MAS”) is satisfied that it is in the public interest to do so, and (c) the strengthening of MAS supervisory oversight over the outsourcing arrangements of banks, whereby banks must comply with certain requirements before obtaining any services other than a service provided by an employee, director or officer of that bank in the course of their employment or appointment from a branch or office of the bank that is located outside of Singapore, or any person.

3. Changes to the Environmental Public Health Act (Cap. 95 of Singapore) (“EPHA”)

Amendments to the EPHA pursuant to the Environmental Public Health (Amendment) Act 2020 (No. 33 of 2020) came into force on 31 August 2021, providing for, amongst others, (a) the requirement for the registration of an Environmental Control Coordinator or an Environmental Control Officer for certain premises for which an environmental sanitation programme is required, (b) the requirement for a licensable aquatic facility to be licensed, and (c) the requirement for a registrable aerosol-generating system to be registered.

4. Implementation of Guide to Data Protection Practices for ICT Systems

The Personal Data Protection Commission has issued a new Guide to Data Protection practices for ICT Systems (“**Guide**”) which can be accessed at <https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Resource-for-Organisation/Tech-Omnibus/Guide-to-Data-Protection-Practices-for-ICT-Systems.pdf?la=en>.

This Guide aims to assist organizations that wish to apply Data Protection by Design when designing and building ICT systems. In particular, the Guide advises that the proper protection of data in ICT systems requires organizations to put in place data protection practices and measures in relation to (a) policy/risk management, (b) SOP/IT operations, and (c) ICT controls, and provides guidance for the implementation of such practices and measures.

1. Updated Security Standards for Voting at Electronic Meetings

Due to the events of the COVID-19 pandemic, electronic meetings (E-meetings) have gained traction in becoming a popular means for holding shareholder's and board meetings. In this regard, the Ministry of Digital Economy and Society has updated the existing standards for voting at E-meetings by issuing the Notification re: Standards for Maintaining Security for Electronic Meetings (No. 2) B.E. 2564 (2021) which entered into force on 8 September 2021. Under the new Notification, the duties of the meeting organizer include ensuring that all attendees are given fair and equal access to cast their vote, every attendee has been fully informed of the necessary information and given ample time to cast their vote, and to maintain the confidentiality of the votes and information of the attendees among other matters. Furthermore, the e-voting system may be examined and certified by the Electronic Transaction Development Agency (ETDA) or any other agency as delegated by the ETDA for conformity with the prescribed conditions under the Notification.

2. New Category of Service Provider Required to Retain Computer Traffic Data

The new Notification of the Ministry of Digital Economy and Society re: Rules on the Retention of Computer Traffic Data by Service Providers B.E. 2564 was enacted and entered into force on 14 August 2021. This Notification replaced the former notification issued in 2007. Key change to the regulatory provision under this Notification is the addition of two new categories of service providers who must retain computer traffic data pursuant to Section 26 of the Computer Related Crime Act B.E. 2550 (2007). These include (a) the application service provider that enables the communication between the general public such as App Store, Google Play, Chatbot, Clubhouse, Telegram, or other similar services, and (b) social media service provider such as Facebook, YouTube, Instagram, Line and WhatsApp. Other change to the regulatory provision includes the addition of new security measures whereby the service providers must arrange for a digital identification verification system pursuant to the minimum standard set under the Electronic Transactions Act B.E. 2544 (2001).

3. Detailed Procedures for VAT Registration by Overseas E-Service Providers

In relation to the measure imposing VAT registration on overseas e-service providers which became effective earlier this year requiring VAT registration and payment by service providers to be made as of 1 September 2021, the Ministerial Regulation No. 377 (B.E. 2564) (2021) issued under the Revenue Code re: Procedure Concerning Documentary Evidence and Registration for Value Added Tax via Electronic Means for Overseas E-Service Providers was published in the Government Gazette on 27 August 2021 to prescribe the detailed procedures for VAT registration. Under this Ministerial Regulation, the preparation, submission, receipt or storing of documentary evidence must be done via electronic means and in accordance with the prescribed measures. Furthermore, a VAT registrant must also notify the Revenue Department of any changes made to the particulars of VAT registration such as the name, business email address, business website; temporary cessation of business for a period of more than 30 days; relocation of a business; business cessation and any other items as prescribed.

4. New Regulation on Fees Rate for Debt Collection

Effective from 12 September 2021 onward, the Notification of the Debt Collection Supervisory Committee re: Prescribing Fees or Other Expenses Rate from Debt Collection seeks to curb the practice of some debt collectors who demand excessive amount of money from the debtor as a debt collection fee or other related expenses. The Notification prescribes the maximum rate of fees or any expenses for debt collection at not more than Baht 50 per each debt collection cycle (i.e., the period from the date of payment default for the current installment until the due date of the next installment period, with each period being no less than one month), or not more than Baht 100 for each debt collection cycle in the case where more than one installments are in default. Exception is made for the debt from hire purchase or lease of motor vehicle under the law on vehicle in which the fees or expenses may be demanded for up to Baht 400. Additionally, such fees and expenses from debt collection may not be demanded from the debtor when the total outstanding or due debts amount to less than Baht 1,000, or after the debt has been wholly paid or the lawful termination of the agreement. However, it may be worth noting that as this Notification is prescribed under the Debt Collection Act B.E. 2558 (2015), it would be applicable to debtor who is natural person only.

1. Decree No. 85/2021/ND-CP Amending and Supplementing Decree 52/2013/ND-CP on E-Commerce

This Decree 85 will come into effect on 01 January 2022, of which some new points could significantly impact foreign businesses in this sector in Vietnam as below:

- (i) Expanding the applicable entities falling within the scope of foreign traders and organizations engaging in e-commerce activities in Vietnam as newly defined, which includes: (a) foreign business entities and organizations (“**Foreign Entities**”) having website to provide e-commerce service in Vietnam (“**Foreign Website Owners**”); (b) Foreign Entities offering and selling goods on e-commerce platforms in Vietnam and (c) foreign investors investing in the e-commerce service sector (“**E-commerce Foreign Investors**”).
- (ii) Adding a definition of Foreign Website Owners, as those having one of the following forms of e-commerce website: (a) E-commerce website under Vietnamese domain name; (b) E-commerce website displayed in Vietnamese language; and (c) E-commerce website reaches 100,000 transactions from Vietnam in a year and certain obligations the Foreign Website Owners must follow.
- (iii) Providing new market access conditions applicable to E-commerce Foreign Investors since Decree 85 determines that e-commerce business is a market access conditional business sector applicable to foreign investors. In specific, the E-commerce Foreign Investor must be in the form of establishment of an enterprise in Vietnam or via an M&A transaction. Besides, if the E-commerce Foreign Investor controls 01 or more enterprises within group of 05 enterprises leading the e-commerce service market in Vietnam according to the list announced by the Ministry of Industry and Trade, they must have appraisal opinion on national security of the Ministry of Public Security of Vietnam.

2. Draft Decree Amending Decree 72/2013/ND-CP on the Management, Provision and Use of Internet Services and Online Information

This Draft Decree is published by the Ministry of Information and Communications of Vietnam (“**MIC**”), which has the following notable contents:

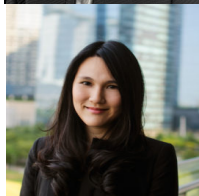
- (i) Providing stricter regulations on cross-border information services. In particular, it increases the number of cross-border information service providers subject to stricter obligations (“**Subjected Providers**”) by drastically reducing the qualifying quantity as criteria to determine Subjected Providers from more than 1,000,000 unique visitors (“**UVs**”)/month to more than 100,000 UVs/month. Additionally, it expands the scope of ‘violating acts’ and information in the services of offshore service providers that trigger the authorities’ administrative actions.
- (ii) Providing clearer and stricter regulations on administration of social networks. Accordingly, domestic social network services will be classified into social networks with 10,000 UVs or more per month (Type 1) which is subject to license; and those with less than 10,000 UVs per month (Type 2) which is subject to notification procedure only. Additionally, all accounts, fan-pages or content channels with 10,000 or more followers/subscribers on the social networks (whether onshore or offshore) must notify the MIC of, among others, their contact information, whereas those have less than 10,000 followers or subscribers are exempted from such requirement, unless they want to enable livestreaming or revenue-generating services.
- (iii) Introducing new regulations on data center services, including, amongst others, definitions for data center services, registration and notification procedures applicable to such services in Vietnam.

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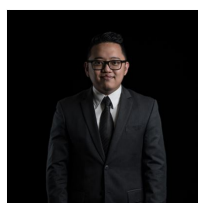
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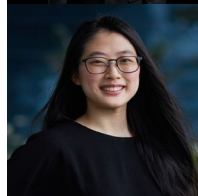
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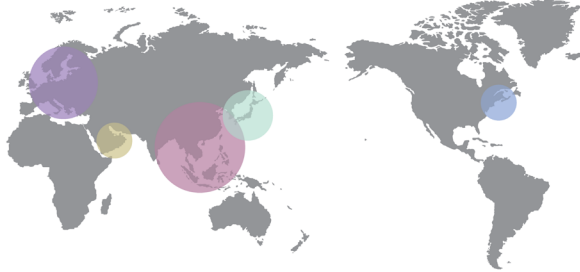
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