



NISHIMURA & ASAHI

Fourth Quarter 2021 (Oct. - Dec.)



SOUTHEAST ASIAN LEGAL UPDATE



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Set out below is a summary of some notable Indonesia regulatory updates in this quarter (October - December 2021).

1. New Regulation on Carbon Trading

The President of the Republic of Indonesia recently issued Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Pricing for Achieving the Nationally Determined Contribution Target and Controlling Greenhouse Gas (“GHG”) Emissions in National Development. The regulation introduces the following mechanisms in relation to carbon pricing (i.e., the economic value of anthropogenic GHG emissions) in several sectors, including:

- (a) energy, (b) waste, (c) processing industry and product utilization, (d) agriculture, and (e) forestry:
- (i) **carbon trading**: is a market-based mechanism to reduce GHG emissions through the sale and purchase (either domestically or internationally) of carbon units (a generic term representing permission to emit a set amount (typically one ton) of carbon or other regulated GHG);
- (ii) **performance-based payments**: provide incentives to businesses that successfully reduce their GHG emissions on the basis of their verified results of GHG emissions reduction and/or conservation or increment of carbon reserves; and
- (iii) **carbon levies**: imposition taxes, customs and excise, or other government charges. This is in line with the enactment of Law No. 7 of 2021 on Harmonization of Tax Regulation, which introduces tax imposition to the purchase of carbon-containing goods or any activities that generate carbon emissions. As from April 2022, carbon tax will be applied to coal-fired power producers. Carbon tax will be expanded to other sectors gradually, subject to certain conditions.

2. Capital Market Updates: (i) Introduction of Multiple Voting Shares and (ii) Redefining of Free Float Share

- (i) The Financial Services Authority (“OJK”) introduced a share classification with multiple voting shares (“MVS”) for technology-based issuers through OJK Regulation Number 22/POJK.04/2021. The regulation allows a company intending to carry out initial public offering of shares meeting certain criteria to issue a special class of share where one share carries more than one voting right. The criteria includes, among others, that the company must have total assets of at least IDR 2 trillion and have carried out operational activities for at least three years before submitting a registration statement with the OJK for an initial public offering. The MVS period is limited and MVS holders are prohibited from transferring such shares for two years after the registration becomes effective.
- (ii) On 21 December 2021, Indonesia Stock Exchange (“IDX”) issued (new) “IDX Rule I-A on the listing of share and equity securities other than shares issued by listed companies,” imposing a stricter (so-called) “free float” requirement on listed companies. The new rule redefines the term “free float share” to only refer to shares that are: (a) owned by a shareholder with less than 5% of all listed shares of a publicly listed company (“Tbk”), (b) not owned by the Tbk controller (or an affiliate thereof), (c) not owned by a director or a commissioner of the Tbk, and (d) not treasury stock.

3. Constitutional Court Decision: Judicial Review of the Omnibus Law concerning Job Creation (“Omnibus Law”)

On 25 November 2021, the Constitutional Court rendered its decision on the judicial review of the Omnibus Law, highlighting certain procedural flaws in its establishment. Nonetheless, the Constitutional Court did not invalidate the Omnibus Law, but instead only ordered the Government and the House of Representatives to “revise” it within two years. If no revision is made within the prescribed timeframe, the Omnibus Law will be deemed permanently unconstitutional and invalid. During the 2-year period, the Omnibus Law remains in force, but the Government is prohibited from issuing new implementing regulations for the Omnibus Law.

As cited by the media, the Coordinating Minister for Economic Affairs said that the Government will immediately follow-up on the Constitutional Court’s decision by preparing the necessary amendments to the law. This should give certain comfort to businesses because it hints that the Government will take all necessary actions to “rectify” the procedural flaw in the Omnibus Law within the 2-year period as ordered by the Constitutional Court.

1. COVID-19 Measures

A number of legal developments in relation to COVID-19 have been implemented in pursuit of a careful and controlled transition to COVID resilience to ensure the current situation continues to remain stable and allow progressive resumption of social and economic activities. This includes: (a) implementing Vaccination-Differentiated Safe Management Measures which apply to settings such as shopping malls, dine-in food and beverage (F&B) establishments, attractions, events sports/exercise activities and classes, whereby stricter measures are applied to unvaccinated individuals, (b) travel restrictions for countries/regions affected by Omicron cases and an enhanced testing regime for travellers, including those arriving via the Vaccinated Travel Lanes (VTLs), and (c) allowing up to 50% of employees who can work from home to return to the workplace from 1 January 2022, while employees who are not fully vaccinated gradually will not be allowed to enter into the workplace by 31 January 2022.

From 15 January 2022 onwards, where employers determine that such unvaccinated employees whose jobs require working on-site, employers can (1) redeploy such employees to suitable jobs that can be done from home with remuneration commensurate with the responsibilities of the alternative jobs, (2) place them on no-pay leave based on mutually agreeable terms, or (3) as a last resort after exploring the options above, terminate their employment (with notice) in accordance with the employment contract (if termination of employment is due to employees' inability to be at the workplace to perform their contracted work, such termination of employment would not be considered as wrongful dismissal).

2. New Copyright Act 2021 (No. 22 of 2021) (“Copyright Act”)

The new Copyright Act, which came into force on 21 November 2021, replaces the existing Copyright Act (Cap. 63). The Act will update and enhance Singapore's copyright regime to take into account technological developments which have immensely impacted how copyright works are created, distributed, accessed, and used. Key changes include, amongst others, a new right of attribution and other strengthened rights for creators and performers, a new exception for computational data analysis, civil and criminal liabilities against retailers and distributors of unauthorized audio-visual streaming services or products, and a new purpose-based exception in relation to freely available online works for educational uses at educational institutions.

3. Changes to the Tripartite Guidelines on Mandatory Retrenchment Notifications

It is mandatory from 1 November 2021 for employers with at least 10 employees to notify the Ministry of Manpower of all retrenchments regardless of the number of employees affected (the previous requirement was if five (5) or more employees were retrenched within any six (6) month period). The notification must be submitted within five (5) working days after the employee is notified of his or her retrenchment.

4. Amendments to the Income Tax Act (Cap. 134) (“Income Tax Act”)

Amendments pursuant to the Income Tax (Amendment) Act 2021 (No. 27 of 2021) which came into force on 21 November 2021, relate to, amongst others, tax measures announced in the Budget 2021 Statement on 16 February 2021, economy-wide and sector-specific measures announced by the Government in May 2021 and July 2021 in response to COVID-19, and other technical/administrative amendments in relation to the tax treatment of trading stock, administration of public schemes by the Inland Revenue Authority of Singapore (IRAS) and a new provision for the protection of informers.

1. Regulation of the Department of Land Transport re: Registration and Tax Procedures for Ride Hailing Car Via Electronic System B.E. 2564

In order to facilitate the registration of ride hailing cars via electronic system, the Regulation of the Department of Land Transport re: Registration and Tax Procedures for Ride Hailing Car Via Electronic System B.E. 2564 was promulgated and entered into force on 29 October 2021. Under this Regulation, the registration of ride hailing car via electronic system is limited to one car per applicant. Following approval, the applicant (car owner) shall bring the car for inspection in order to proceed with registration and tax procedures within 90 days from the date of approval at the District Office of the Department of Land Transport, whereby failure to complete such procedure within the prescribed period shall result in the approval being cancelled. Furthermore, the submission of an application and the following supporting documents shall be required: evidence of registration as a ride hailing car via electronic system with the electronic system service provider, public driving license, evidence of having insurance under the Motor Accident Victims Protection Act B.E. 2535 in the prescribed amounts of coverage for damage to the life or body of passengers and third parties, and damage to property. Upon passing inspection, the successful applicant may proceed to change the car purpose registration from a private car to a ride hailing car via electronic system.

2. New Safety Standard for Work Relating to Radiation

The Ministerial Regulation Prescribing Standard for Work Relating to Radiation B.E. 2564 (2021) was enacted and entered into force on 3 December 2021 under the Occupational Safety, Health, and Environment Act B.E. 2554 (2011). This Ministerial Regulation replaces the previous ministerial regulation which had been in force since 2005. Under this Ministerial Regulation, an employer who brings into the work place a radiation source (i.e. radioactive material, radiation generator or nuclear material) must notify the Department of Labor Protection and Welfare of the details of such radiation source within seven days. On the work standard of employees whose given works are related to radiation, this Ministerial Regulation prescribes many duties to the employer, such as the duty to designate the controlled area in which the employer must ensure that no person may bring a radiation source or contaminated object outside the controlled area, the duty to provide a personal radiation recorder to be worn at all time during work for the employee, the duty to provide a radiation sign, alarm sign, and emergency alarming system, and the duty to provide personal safety equipment that can prevent or reduce the danger from radiation entering the body for the employee to be worn at all time during work. The employer who brings a radiation source into the workplace prior to the effective date of this Ministerial Regulation must make notification as prescribed in this Ministerial Regulation within 30 days from the effective date of this Ministerial Regulation.

3. Royal Decree Prescribing Land and Buildings Tax Rate B.E. 2564

In order to relieve taxpayers from the effects of the COVID-19 pandemic and to provide them with sufficient time to prepare for making payment of land and building taxes at the actual rate, the Royal Decree Prescribing Land and Buildings Tax Rate B.E. 2564 which was published in the Government Gazette on 13 December 2021 and entered into force on 14 December 2021, prescribes the same land and building tax rate for the year of 2022 as in the years of 2020 and 2021. For the collection of land and buildings rate tax for the tax year of 2022 onwards, under the Land and Building Tax Act, tax rates shall be based on the type of utilization of such land or building, whereby such taxes shall be collected on the value of the land and/or building as follows: (a) the tax rate for land or buildings used in agriculture shall be collected at 0.01 - 0.1 percent; (b) the tax rate for land or buildings used as housing shall be collected at 0.02 - 0.1 percent; (c) the tax rate for land or buildings utilized for other purposes (such as commercial or industrial purposes) shall be collected at 0.3 - 0.7 percent; and (d) the tax rate for vacant or unutilized land or buildings shall be collected at 0.3 - 0.7 percent.

4. Prescription of the Prohibited Advertising Messages

On 20 December 2021, the Ministerial Regulation Prescribing Advertising Messages for Products or Services which are Unfair to Consumers or may be Detrimental to the Society B.E. 2564 (2021) was announced and entered into force under the Consumer Protection Act B.E. 2522 (1979) (the “**Consumer Act**”). This Ministerial Regulation purports to amend the list of the advertising messages which are unfair to the consumers or may be detrimental to society to keep up with the current usage of new technology. Some of the new changes under this Ministerial Regulation include the provision which provides that (1) the details of the advertising messages which involve giveaways or gambles or competition for awards must be clear, not misleading, and provide the site for consumers seeking additional details, (2) advertising messages for selling units in a condominium or selling of land allocated into small plots via electronic media or other similar method must provide the prescribed details (this used to be only for newspaper or other print

media), and (3) if the condominium requires environmental impact assessment, the advertising messages must also provide the current approval status according to the law on enhancement and conservation of national environmental quality; otherwise, these advertising messages would be prohibited. Usage of the advertising messages which have the prohibited characteristics under this Ministerial Regulation may incur criminal liability of imprisonment not exceeding three months or a fine not exceeding Baht 60,000 or both pursuant to Section 48 of the Consumer Act.

1. Decision 29/2021/QĐ-TTg of the Prime Minister Regulating Special Investment Incentives (“Decision 29”)

This Decision 29 comes into effect on 6 October 2021 with the following main points:

- (i) Decision 29 provides in detail the concepts and conditions for, amongst others, determining and classifying (into level 1 and level 2) high technology criterion, technology transfer criterion, and criterion regarding participation of Vietnamese enterprises in value chains of projects which are entitled to special investment incentives as provided by Article 20.2 of the Law on Investment (“LOI”);¹ and
- (ii) Subject to, amongst others, type of investment project and the level of high technology, technology transfer, participation of Vietnamese enterprises in value chains, the preferential corporate income tax (CIT) rate applicable to these projects shall vary from 5% (within 37 years) to 9% (within 30 years). Besides, CIT exemption may be granted up to six years and CIT reduction of 50% may be applied within up to 13 years. Land and water surface rent may also be entitled to special incentives with an exemption term up to 22 years, and reduction up to 75% for the remaining project term.²

2. Draft Law Amending and Supplementing a Number of Articles of Law on Public Investment, Law on Investment in the Form of Public-Private Partnership (“LOI”), Law on Bidding, Law on Electricity, Law on Enterprises (“LOE”), Law on Special Consumption Tax and Law on Civil Judgement Enforcement (the “Draft Law”)

This Draft Law, which is expected to be passed in 2022, introduces, among others, some revisions to the current LOI and LOE as follows:

- (i) For the LOI, the Draft Law allocates more power to the provincial authority. Specifically, the provincial authority is empowered to grant investment in-principle approval (IPA) to, amongst others, investment projects for construction of residential housing or urban zones using under 300 hectares of land and having a population scale under 50,000 people, rather than those using under 50 hectares of land and having a population scale under 15,000 people in urban areas, and those using under 100 hectares of land and having a population scale under 10,000 people in non-urban areas as provided by Article 32.1(b) of current LOI;³ and
- (ii) For the LOE, in case a meeting chairperson and meeting minutes maker refuse to sign meeting minutes of a members’ council (“MC”) or a board of management (“BOM”) as provided by Article 60.3 and 158.2 of the LOE, the Draft Law requires the signatures of all members of the MC or BOM participating in the meeting who ratify the meeting minutes in order for such minutes to be valid, rather than requiring the signatures of all other members of the MC or BOM participating in the meeting as provided by the current law.⁴ Besides, regarding the conditions for ratification of resolutions of the General Meeting of Shareholders (GMS) as provided by Article 148.1 and 148.2 of the LOE, the ratio of 65% shall be calculated on the total of shareholders participating and voting in the meeting, rather than on the total of shareholders simply participating in the meeting (as provided by current law).⁵

¹ Article 3 of Decision 29.

² Articles 5, 6 and 7 of Decision 29.

³ Article 3.2 of the Draft Law.

⁴ Articles 6.4 and 6.7 of the Draft Law.

⁵ Articles 6.4, 6.6 and 6.7 of the Draft Law.

3. Draft Circular replacing Circular 03/2016/TT-NHNN guiding a number of contents on foreign exchange management for foreign borrowing and repayment by enterprises (the “Draft Circular”)

In October 2021, this Draft Circular was published by the State Bank of Vietnam (“SBV”) for public opinions,⁶ with the following notable contents:

- (i) The Draft Circular broadens the short-term foreign loans which are not subject to the registration requirement by increasing deadlines for borrowers to complete the debt payment from 10 to 30 days; accordingly only foreign short-term loans with a term of one year or less which have outstanding principal after one year from the first withdrawal and borrowers who fail to repay the loans entirely after 30 days from expiration of such one year period shall be subject to registration at the SBV;⁷
- (ii) The Draft Circular adds and amends some cases of changes in foreign loans that are subject to the notification procedures instead of the registration procedure, including, amongst others, (a) changes in plans to pay interest and fees which do not change the principles and methods of determining interest and fees;⁸ and (b) if the principal amount actually withdrawn and the principal amount actually repaid in a specific period is less than the amounts confirmed in the registration confirmation and such change does not require mutual agreement amongst the parties;⁹ and
- (iii) The Draft Circular provides new guidance on enforcement of security interest created in favor of foreign lenders. Accordingly, amongst others, the Draft Circular recognizes certain concepts practically used in foreign loans, including the representative agents who are authorized by the lenders and borrowers to handle matters arising in the course of implementing security transactions related to the foreign loans and regulates, for the first time, payment flow and these agents’ responsibilities.¹⁰

⁶ Please see: [NHNN - Dự thảo Thông tư thay thế thông tư 03/2016/TT-NHNN ngày 26/2/2016 \(sbv.gov.vn\)](#)

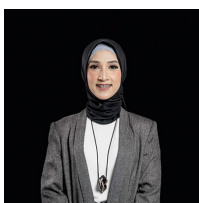
⁷ Article 9.3 of the Draft Circular.

⁸ Article 15.3.(d) of the Draft Circular.

⁹ Article 15.5 of the Draft Circular.

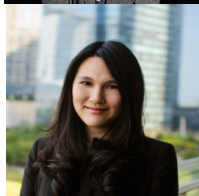
¹⁰ Article 35.3 of the Draft Circular.

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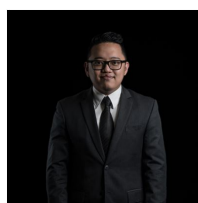
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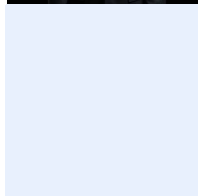
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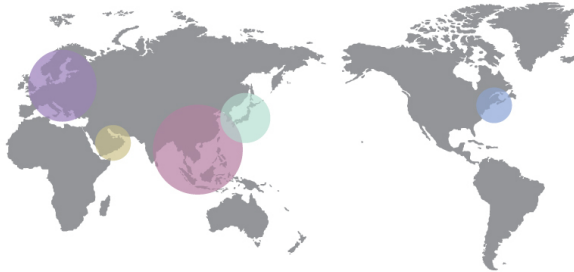
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