



NISHIMURA & ASAHI

Second Quarter 2021 (April - June)



SOUTHEAST ASIAN LEGAL UPDATE

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Set out below is a brief summary of some implemented regulations of the Omnibus Law.¹

1. PMA Companies: Minimum Paid-Up Capital

The Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* - BKPM) issued a new implementing regulation No. 4 of 2021, which sets a new minimum requirement for issued and paid-up capital that new foreign investment (PMA) companies must satisfy. Such minimum requirement has been increased from IDR 2.5 billion (± USD 175,000) to IDR 10 billion (± USD 701,500), and the regulation became effective on 2 June 2021. Under the new regulation, **each** foreign shareholder is no longer required to satisfy certain minimum paid-up and issued capital requirement unless an **individual** foreign shareholder is applying for a residence permit in Indonesia.

2. Offline and Online Retail Business

Department stores and supermarkets with a sales space area of more than 400 sqm are now fully open to foreign investment. Previously, these businesses were either closed to foreign investors or subject to a certain maximum foreign shareholding limit. However, other (technical) requirements or restrictions (such as department stores owned by a PMA company being prohibited from being a standalone store) may still exist. Therefore, foreign investors should ensure that they are aware of any such requirements in order to minimize potential compliance issues in the future.

In terms of online retail (e-commerce), as of late May 2021, certain retail e-commerce businesses which were previously declared open for foreign investments in early 2021 are now reserved for micro, small, and medium enterprises (MSME). Accordingly, direct investments in such businesses by foreign investors are not permitted given that they are considered to constitute a large enterprise.

3. Flexibility in the Requirement to Develop (Low-Income) Public Apartments

In order to assist developers of commercial apartments with meeting their obligations to develop (low-income) public apartments, the government of Indonesia has offered a practical alternative to the developers by giving them the option to pay a “public apartment development fee”. If a developer chooses to pay the fee, it shall make such payment to the Accelerating Body for Housing Development (*Badan Percepatan Penyelenggaraan Perumahan* or “BP3”). Before making such payment, the developer must first submit its development cost calculations to BP3, and BP3 will review them accordingly. Please note that it is possible that BP3 may disagree with the proposed costs and calculate a higher cost.

4. Less Restrictions on Hospitals and Primary Clinics (*Klinik Utama*) Business

Foreign investors are now permitted to own up to 100% equity in private hospitals and primary clinics (*klinik utama*). In comparison, foreign ownership previously was permitted to hold only up to 67% (or up to 70%, if foreign investors were from ASEAN countries). The new regulatory regime also has relaxed the minimum number of inpatient beds that specialty hospitals with foreign direct ownership are required to have.

5. Foreign Investment Rules on Alcohol Industry

In response to protests by certain groups against the opening of the alcohol beverage production industry for private investment as set forth under Presidential Regulation No. 10 of 2021 in early February 2021, the president of Indonesia issued Presidential Regulation No. 49 of 2021 to amend Regulation No. 10 and declare alcohol beverage production business as a prohibited business for foreign investment.

However, retail and wholesale of alcoholic beverages continues to be open for private investment (subject to such foreign investors meeting certain requirements set out under the sectoral regulations).

¹ Please refer to our previous newsletter for more detailed discussion of the Omnibus Law.

A number of new laws and regulations have been introduced in the last quarter, and we wish to highlight some key updates in relation to certain selected new laws and regulations, which we have briefly summarized below.

1. COVID-19 Measures

A number of developments in the law in relation to COVID-19 have been implemented in light of Phase 2 (Heightened Alert) and Phase 3 (Heightened Alert), including (a) work-from-home being the default work arrangement, and employers must declare their on-site manpower details with the Ministry of Trade and Industry, (b) extension of the Jobs Support Scheme for affected sectors, and (c) extension of the relief period from legal and enforcement actions for persons unable to perform contractual obligations for specified and prescribed categories of contracts.

2. Protection from Harassment Court

The Protection from Harassment Court (“PHC”), a specialist court with oversight of all criminal and civil cases under the Protection from Harassment Act (Cap. 256A of Singapore) (“POHA”), was established on 1 June 2021 allowing expedited and simplified proceedings.

3. Extension of Third-Party Funding Framework

Amendments to the Civil Law (Third-Party Funding) Regulations pursuant to the Civil Law (Third-Party Funding) (Amendment) Regulations 2021 came into force on 28 June 2021. The third-party funding framework (wherein a commercial funder is permitted to pay all or some of a claimant’s legal fees and expenses in return for a share of any sum recovered from the resolution of the claim) has been extended to cover domestic arbitration proceedings, certain proceedings in the Singapore International Commercial Court, and related mediation proceedings.

4. Changes to Dependant Pass

From 1 May 2021, foreigners living in Singapore on a Dependent Pass will require a work pass (i.e. an Employment Pass, S Pass, Work Permit or Personalised Employment Pass) to work in Singapore. Previously, Dependent Pass holders could work in Singapore after obtaining a letter of consent from the Ministry of Manpower. Dependent Pass holders already working in Singapore under a letter of consent may continue working until their current letter of consent expires.

5. Changes to the Listing Rules

A number of amendments will be implemented to the Singapore Exchange Securities and Trading Limited Mainboard and Catalist listing rules, including the requirement that all issuers must establish and maintain a whistleblowing policy. From 1 January 2022, issuers will need to announce in their annual reports that the whistleblowing policy is in place for financial years starting 1 January 2021, as well as highlighting how they have complied with certain requirements in relation thereto.

1. Postponement of the Enforcement of the Personal Data Protection Act

In order to address the adverse impact of the COVID-19 pandemic on private and state entities that are deemed data controllers, the enforcement of the Personal Data Protection Act B.E. 2562 (2019) has been postponed for a second time by virtue of the Royal Decree Prescribing Data Controller Business and Entities which is Exempted from the Personal Data Protection Act B.E. 2562 (No. 2) B.E. 2564 (2021). The Royal Decree entered into force on 9 May 2021, and as a result of its promulgation, the postponement of the enforcement of the provisions of the Personal Data Protection Act has been extended to 31 May 2022. This measure allows business entities more time to examine and adjust their current measures on data protection to ensure that they are compliant with their obligations under the Personal Data Protection Act.

2. Prohibition of Trading Certain Digital Tokens and Cryptocurrencies

The Securities and Exchange Commission recently announced the prohibition of trade of certain digital assets on digital asset exchanges in Thailand under the Notification of the Securities and Exchange Commission No. KorThor. 18/2564 Re: Rules, Conditions, and Procedures for Undertaking Digital Asset Businesses (No. 11). Under the Notification, the digital assets prohibited for trading include meme tokens, fan tokens, non-fungible tokens (NFT), and digital tokens utilized in blockchain transactions and issued by digital asset exchanges or related persons. The Notification also requires digital asset exchanges to set requirements on their listing rules for digital tokens issued by the exchange or related persons, whereby digital token issuers must comply with the white paper requirements and any other relevant rules. Failure to comply may result in the delisting of the digital token from the exchange. This Notification came into force on June 11 2021 without retroactive effect.

3. Assistance to Business Operators Impacted by COVID-19 Pandemic

To provide further aid for business operators impacted by the COVID-19 pandemic, the Emergency Decree on the Provision of Assistance and Rehabilitation of Business Operators Impacted by the Spread of the COVID-19 Pandemic B.E. 2564 (2021) was enacted and entered into force on 10 April 2021. The main measures include the granting of loans by the Bank of Thailand to financial institutions so that they may provide loans to business operators with an interest rate of not more than five percent per annum, and permission to receive the transfer of property from business operators as security for repayment, whereby the business operators may repurchase such property at a resale price which is not higher than the price at which it was sold, or may rent such property from the financial institution in order to conduct business.

4. New Calculation of Interest Rate and Payment of Debt by Installment

In order to address the current socioeconomic situation in Thailand, the Emergency Decree on Amending the Civil and Commercial Code B.E. 2564 (2021) was promulgated and entered into force on 11 April 2021. The Decree amends interest rates which are not fixed by a judicial act or law, under Section 7 of the Civil and Commercial Code, to be three percent per annum, provided that such rate may be amended every three years subject to the Ministry of Finance's review. The interest rate during a default period for pecuniary debt also was amended to the interest rate under Section 7 of the Civil and Commercial Code plus two percent per annum (i.e., five percent per annum at an early stage). Additionally, in the case of debt to be paid by installments, interest during the default period may only be claimed from the principal of such installment, as opposed to the entire principal amount which remains outstanding but not yet due. Furthermore, the new calculation of interest rates under this Decree shall apply only to interest or installments which have been due since the date that the Decree entered into force.

5. Legalization of Ride-Hailing Taxi Services via Mobile Applications

In order to address the conflict between traditional taxi companies and ride-sharing service providers such as GrabCar, the Ministerial Regulation on Ride-Hailing Taxi Services via Electronic Systems B.E. 2564 (2021) was finally promulgated on 23 June 2021, and legalized the use of private vehicles for ride-sharing or ride-hailing taxi services via mobile applications. This Ministerial Regulation establishes, among others, the rules and requirements on vehicle registration, characteristics of the vehicle and electronic communication devices, specifications of electronic systems which contain information such as the identity of the driver, fee calculations, and vehicle trackers. The vehicles used for these ride-hailing taxi services shall have no more than seven seats, be a sedan with no less than four doors, not be a truck or van, and be affixed with a sign or mark prescribed by the Department of Land Transport indicating that they are used for ride-hailing taxi services.

A number of new regulations have been introduced in the last quarter. Below are some points to note from some remarkable new regulations and drafts.

1. New guidance of the Law on Enterprises

Decree 47/2021/ND-CP, which took effect on 1 April 2021, provides some guidance on social enterprises, state-owned enterprises (“SOE”), and national security enterprises. According to this Decree,

- (i) Information disclosure: SOEs are responsible for publishing and maintaining certain information on their websites, portals, or the website of the representative authority of the state owner and the SOEs’ portal for at least five years. The information to be disclosed includes its charter, annual business plan report, audited financial statements, changes on enterprise management, and enterprise restructuring.
- (ii) Additional authority of supervisory boards: Supervisory boards of SOEs have been granted additional authority, namely the authority to supervise large projects with a value of more than 30% of the owner’s equity, contracts for sale, purchase, or business with value of more than 10% of the owner’s equity, and any extraordinary transactions by SOEs.

2. Draft Decree Guiding the Law on Environmental Protection 2020

The Ministry of Natural Resources and Environment (“MONRE”) recently published a draft decree providing guidance on certain provisions of the Law on Environmental Protection 2020 (the “LEP”), which has the following notable contents:

- (i) Environmental impact assessment (“EIA”): Sets forth specific criteria to categorize projects (including investment projects) having high, medium, or low risks of adverse environmental impacts as subject to preliminary EIA, EIA, or environmental permits, as the case may be;
- (ii) Environmental permit and environmental registration: Provides guidance on the application (with statutory forms), sequences, and procedures for issuance, adjustment, renewal, re-issuance, and revocation of environmental permits and trial operation of waste treatment facilities after obtaining environmental permits. The Draft Decree also details the subjects which are exempt from environmental registration based on the principles prescribed under the LEP;
- (iii) Manufacturers and importers’ recycling and treatment responsibilities (“EPR”): Sets forth detailed regulations on the responsibilities of manufacturers and importers in regard to recycling and waste treatment for products listed in the annexes of this Draft Decree (which include batteries, oil, computers, and household electrical appliances); and
- (iv) Green credits and green bonds: Provides a list of projects eligible for green credits and green bonds, the incentive mechanism for granting green credits, the roadmap for green credit implementation, and preferential policies for issuers and purchasers of green bonds.

3. Draft decree on mitigation of greenhouse gas emissions and protection of the ozone layer

The MONRE also recently published a draft decree on mitigation of greenhouse gas (“GHG”) emissions and protection of the ozone layer. It specifies, among other topics:

- (i) GHG emission inventory and reduction: Facilities subject to GHG emission inventory shall be determined and submitted to the Prime Minister for promulgation prior to 31 March 2022, GHG emission quotas shall be promulgated by the MONRE, and GHG emission reduction plans must be established by relevant facilities and submitted to the relevant authorities.
- (ii) Organization and development of domestic carbon market: The subjects, development roadmaps, certifications on carbon credit, mechanisms for exchanging GHG emission quotas, and carbon credits in the domestic carbon market are regulated. Notably, a carbon credit exchange shall be established and put into provisional operation in 2026, and official operation in 1 January 2028.
- (iii) Ozone layer protection: Ozone-depleting substances, substances causing greenhouse effects, roadmaps for management and exclusion of such substances, registration and reporting of the use of such controlled substances, and allocation, adjustment, and supplementation of manufacture, export, and import quotas of controlled substances also are regulated.

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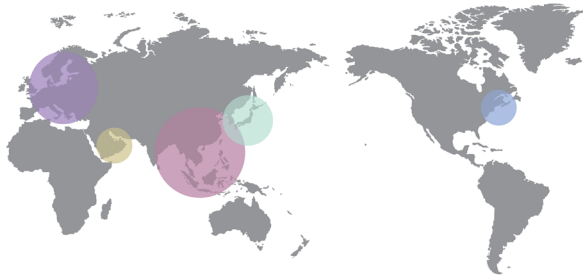


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