

ASEAN TODAY

REGIONAL LEGAL & BUSINESS NEWS

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ASEAN Economic Community News

Regional Trademark System

Representatives of the Intellectual Property Offices of the different ASEAN member states met in Bangkok this month to discuss intellectual property (IP) related issues including a regional trademark system, updates to the ASEAN trademark examination guidelines, and the establishment of an ASEAN IP academy. A feasibility study on a regional trademark system will be conducted under the ARISE Plus Intellectual Property Rights (ARISE+IPR) program, a component of the Enhanced ASEAN Regional Integration Support from the European Union or ARISE Plus. The feasibility study will examine the legal infrastructure, operational set-up, fee structures, stakeholder interests, and the impact on national trademark systems. The benefits of a regional trademark system include reducing the time spent on registering a trademark across all 10 ASEAN countries, creating greater certainty on registration procedures, improving the ease of doing business across region, and attracting new investments.

ASEAN Green Finance

Raising the capital needed to avoid dangerous climate change was the main topic of discussion at the Unlocking Capital for Sustainability event held in Singapore. Experts warned that climate change is a long-term issue that requires the commitment of governments, investors, businesses, and consumers. A joint report by the United Nations and a regional banking and financial services company on green finance opportunities in ASEAN says that the region needs US\$200 billion in green investment annually until 2030 to battle climate change. Green investment into ASEAN needs to be spread across four sectors: infrastructure, renewable energy, energy efficiency, and food, agriculture, and land use.

ASEAN Sugar Taxes

Malaysia is the latest ASEAN country to implement a sugar tax. The country has the highest rate of diabetes in Asia and over half of Malaysia's population is considered overweight or obese. The new tax will be US\$ 0.10 a liter for beverages containing added sugars of more than 5g per 100ml serving and for fruit and vegetable juice containing added sugars of more than 12g per 100ml serving. Thailand implemented a tax on sugary beverages in 2017 of up to 1 baht per liter that will keep increasing until 2023. In Cambodia, manufacturers of drinks with high sugar content are charged 20% per liter. In Laos, the sugar tax is 5-10% per liter. The Philippines tax is US\$0.11 per liter for drinks with added sugar or artificial sweeteners and US\$0.22 for drinks containing any amount of high fructose corn syrup.

Electricity Challenges across ASEAN

Primary energy demand in ASEAN increased by 70% from 2000-2016. The International Energy Agency estimates that the ASEAN region will need US\$1.2 trillion in capital over the next 20 years to upgrade, modernize, and expand power utility grids across the region. Foreign investors from China, the EU, Japan and the US are investing into the power generation in ASEAN. However, much of the foreign investment is going into fossil fuel generation which contributes to global warming and is contrary to ASEAN's sustainable development goals. The member states are currently discussing the formation of the regional ASEAN Power Grid. Additionally, Laos is developing plans to become the network center for a regional electricity transmission system by 2025. Laos signed a tripartite electricity trading agreement with Thailand and Malaysia in 2017 under which Laos would sell 100MW of electricity to Malaysia via Thailand's power grid.

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Vietnam News

Global Index Growth

Vietnam has moved up 13 places in the 2019 Economic Freedom Index. The yearly cross-country analysis by the Heritage Foundation evaluates government policies and economic conditions in 186 countries by tracking the relationship between economic freedom and progress. The report noted Vietnam's increase in fiscal health and gave it high scores for investment freedom and judicial effectiveness that outpace a decline in monetary freedom.

Indonesia Update

Electric Vehicles

Indonesia announced that it is allowing foreign investment into electric vehicle manufacturing. The government wants the country's vehicles to be 20% electric by 2020 – 400,000 cars and 2 million motorcycles. Indonesia also announced that construction will start soon on the country's first lithium battery plant and that the project will be completed in less than 2 years. While the country still lags in the electric vehicle sector, the new battery plant could take Indonesia to the forefront of green transportation in Asia. 40-60% of the total price of an electric vehicle is derived from the price of the battery.

Singapore Watch

EU-Singapore Free Trade Agreement

The EU-Singapore Free Trade Agreement (FTA) was approved by the European Parliament this month and is likely to be ratified and come into force in 2019. The landmark deal will allow 84% of Singapore exports to enter the EU duty-free with the remaining 16% to follow over the next 3-5 years. Singapore will remove tariffs on all EU products entering Singapore and commit to reducing red tape such as recognizing EU safety tests for cars and electronic appliances. The FTA also strengthens intellectual property protections.

Cambodia Bulletin

Retirement Haven

In the Annual Global Retirement Index which ranks the 25 best retirement spots in the world, Cambodia ranks 12th and took the top spot in the Cost of Living category for the fourth year in a row. For buying, investing,

and renting category, Cambodia ranks 4th. Thailand ranks as the 9th best retirement spot in the world and Vietnam ranks 19th.

THAILAND LEGAL REVIEW

Immigration News

SMART Visa Program

In February 2018, the Thai Cabinet announced a new type of Thai visa, the Smart Visa, to attract highly skilled professionals, investors, executives, and startup entrepreneurs wishing to work for, invest in, or establish one of the 10 S-Curve targeted industries. However, after one year, there have been less than 50 Smart Visa applications approved and none of them were issued by Royal Thai Consulates or Embassies overseas. Applicants can submit the Smart Visa application online or by hardcopy through the Smart Visa Unit in Bangkok and now at the Eastern Economic Corridor (EEC) Labour Administration Center in Chonburi. Hundreds of interested people have applied for the Smart Visa, but most have been unsuccessful.

On December 18, 2018, the Office of Investment Promotion (OIP) announced 3 new categories to the targeted Industries in the Smart Visa scheme:

1. Alternative Dispute Resolution
2. Human Resource Development in Science and Technology
3. Environmental Management and Renewable Energy

To make the Smart Visa program more attractive, the OIP has added privileges and relaxed some qualifications for each type of visa.

SMART "T" (Talent)

New Privilege: Access to fast-track service at Suvarnabhumi Airport.

Point 1: Minimum salary

- In 2018 - Not less than 200,000 Baht or its equivalent per month excluding benefits and welfare.
- In 2019 - Not less than 100,000 Baht/month or its equivalent or having an employment contract with a startup. Also, retired experts having endorsements from

a relevant agency with a minimum income of less than 50,000 Baht /month.

Point 2: Government Agency

- In 2018 – Any government agency endorses the expertise in Science and Technology relevant to the targeted industries.
- In 2019 – Only an agency within the Strategic Talent Center’s network.

Point 3: Experts who work in the 3 new target industries

- Must have an employment or service contract or any document issued by the related government agency such as the Thailand Arbitration Center.
- Experts must be certified by the hiring or employing government agency.
- Experts must be certified by the employing agency in the Strategic Talent Center (STC) network.

SMART “I” (Investor)

New Privilege: Access to fast-track service at Suvarnabhumi Airport.

Point 1: Minimum investment

- In 2018 –Total amount of investment in the targeted industries of at least 20 million baht.
- In 2019 - Investing as an individual investor or through a venture capital company of at least 20 million baht or at least 5 million baht for a startup or incubation/accelerator program.

Point 2: Investing through a Venture Capital Company

- In 2018 – This type of direct investment not allowed.
- In 2019 - Investment must be certified by relevant agencies as either a venture capital company investing in technology-based business in manufacturing or delivering services in the targeted industries.

SMART “E” (Executive)

New Privilege: Access to fast-track service at Suvarnabhumi Airport.

Point 1: Minimum salary no less than 200,000 baht or its equivalent per month

- In 2018 – *Exclusive* of other benefits and welfare.
- In 2019 – *Inclusive* of other benefits and welfare.

SMART “S” (Startup Entrepreneur)

New Privilege: Access to fast-track service at Suvarnabhumi Airport.

Point 1: Period of application

- In 2018 – 1 year visa for 1st time and renewable for equal or less than 2 years.
- In 2019- Applicant can request 3 visa periods: 2-year, 1-year, or 6-month.

Point 2: Depository in Thailand bank account

- In 2018 – The remaining maturity term of at least 1 year
- In 2019 – At least 3 months.

Point 3: Depository for spouse and children

- In 2018 – at least 180,000 baht per person is required.
- In 2019 – at least 180,000 baht per person and must be held for at least 3 months.

Point 4: Difference in 3 visa periods

- 2-year visa: A foreigner who established a certified startup company holding no less than 25% of the registered capital or is a Director.
- 1-year visa: A foreigner who has attended an incubation or accelerator program or any other similar program.
- 6-month visa: A foreigner who plans to set up or to engage in promotional activities for a certified startup company.

The purpose of these changes is to persuade foreign talent and investors to apply for the Smart Visa scheme by decreasing the number of requirements set forth since last year and providing the Fast Track Lane privilege to Smart Visa holders. We are still waiting for the related Government agencies to provide more specific criteria that reflect the process and requirements for Smart Visa applications, especially for the 3 new target industries categories. Although our firm has tried to closely follow up with the SMART Visa Unit on the progress of the Smart Visa program and any updates, all information still remains vague and unclear. We were informed that the relevant agencies will make an

announcement on the further details of the certified targeted industries in March 2019.

Taxation Update

Special Income Tax Rate for EEC

In the Royal Decree issued under Revenue Code (No. 641), the withholding tax rate on personal income tax for qualified employees, whether an executive, expert or researcher, can be reduced to a 17% income tax rate for income derived from working under an employment agreement with a company or juristic partnership in the Eastern Economic Corridor (EEC): Chachoengsao, Chonburi, or Rayong (referred to as “Juristic Person”).

To be eligible for such reduction, employees shall comply with the following rules and conditions:

1. Employee qualifications are prescribed by Revenue Department Notification (No. 335):

1.1. Executive

- Work experience abroad at the level of division manager together with having previously worked in Thailand or abroad at any level for more than 10 years in total; or
- Work experience abroad at the level of division manager for more than 3 years, together with having previously worked in Thailand or abroad at any level for more than 5 years in total.

1.2. Expert

- Bachelor’s Degree or equivalent;
- Compliance with employment agreement made with the Juristic Person and that it is beneficial to such target business;
- Work experience abroad in the target business area or work experience of at least 10 years with a Bachelor’s Degree or at least 8 years with a Master’s Degree that applies to and is advantageous to such target business.

1.3. Researcher

- Doctor of Philosophy Degree;
- Conduct research and development under an employment agreement with the Juristic Person in the target business area or an area that applies to and is advantageous to such target business;

- Work experience in conducting research and development relating to the target business for a company, juristic partnership, higher education institution, or other organization whether in the government sector or private agencies abroad:

- A. Such work experience starting from 3 years, but not exceeding 5 years, with acknowledgement of the achievement and international awards, or such achievement being published in an academic journal which is acknowledged internationally by a Higher Education Commission or the Thailand Research Fund, or being registered as Intellectual Property in Thailand or abroad on behalf of itself or any company and juristic partnership, higher education institution, research institute, or organization in the government sector or private agencies, or other employer; or
- B. Work experience in conducting research and development of at least 5 years.

2. Employees defined under Clause 1 must earn income of at least 200,000 Baht per month from working under an employment agreement with any Juristic Person which has been granted investment promotion pursuant to following the BOI Announcements:

- A. BOI Announcement No. 4/2560 dated March 16, 2017; or
- B. BOI Announcement No. 6/2561 dated August 3, 2018.

3. Said juristic employer must submit the names of such employees who wish to claim said reduction together with any details as prescribed by Notification (No. 335) to the Director-General of the Revenue Department.

Remark: Target Industry Businesses: (i) Next-Generation Automotive, (ii) Smart Electronics, (iii) Affluent, Medical and Wellness Tourism, (iv) Advance Agriculture and Biotechnology, (v) Food for the Future, (vi) Robotics Industry, (vii) Aviation and Logistics, (viii) Biofuel and

Biochemical, (ix) Digital Industry or (x) Medical Hub.

Extension for Online Tax Return Filing

Previously, the 8-day extension for filing online tax returns expired on a yearly basis and had to be reapproved each year. However, as part of the National e-Payment Master Plan, the 8-day extension has now been approved for any filings electronically submitted via the Revenue Department e-filing portal between February 1, 2019 and January 31, 2021. A summary of the 8-day extensions is as follows:

Personal Income Tax Return	
P.N.D. 90 and P.N.D. 91	From regular filing by March 31 st of the following year <u>to April 8th of the following year</u>
P.N.D. 94	From regular filing by September 30 th of the tax year <u>to October 8th of the tax year</u>

Corporate Income Tax Return	
P.N.D. 50 P.N.D. 52 and P.N.D. 55	From regular filing within 150 days from the last day of the accounting period <u>to within 158 days from the last day of the accounting period</u>
P.N.D. 51	From regular filing within 2 months from the last day of the first half year of the accounting period <u>to within 2 months and 8 days from the last day of the first half year of the accounting period</u>
P.N.D. 54	From regular filing within 7 days from the last day of the month in which assessable income is paid, or profit is disposed abroad <u>to within 15 days from the last day of the month in which assessable income is paid, or profit is disposed abroad</u>

Specific Business Tax (SBT)	
P.T. 40	From regular filing by the 15 th of the following month <u>to the 23rd of the following month</u>

Withholding Tax Return	
P.N.D. 1 P.N.D. 2 P.N.D. 3 and P.N.D. 53	From regular filing within 7 days from the last day of the month in which assessable income is paid, <u>to within 15 days from the last day of the month in which assessable income is paid</u>

Value Added Tax (VAT)	
P.P. 30	From regular filing by the 15 th of the following month <u>to the 23rd of the following month</u>
P.P. 36	From regular filing within 7 days after the last day of the month in which: <ul style="list-style-type: none"> ▪ the payment of goods or services is made to a business person residing outside Thailand, who temporarily carries on the business in the sale of goods or provision of services in Thailand and does not apply for temporary VAT registration; ▪ a property of a VAT registrant is auctioned; or ▪ a VAT liability has occurred for 30 days to a transferee of goods or services under Section 83/7 of the Revenue Code. <u>To within 15 days after the last day of the month in which such aforementioned case is made, as the case maybe.</u>

Remark: Taxpayers must submit such forms as the case may be whether an original version or a copy via e-filing only in order to receive such extensions.

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