

# ASEAN Today

## Regional Legal & Business News

March 2020

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### Thailand COVID-12 Intelligence

#### Pandemic Coronavirus V/S Force Majeure

The term “force majeure” as prescribed inter alia under the provision of Section 8 of the Thai Civil and Commercial Code (“the CCC”), “Force majeure’ denotes any event the happening or pernicious results of which could not be prevented even though a person against whom it happened or threatened to happen were to take such condition.” This provision covers the issue of legal protection to those effectively suffering critical situations in responding to or performing an act or to execute any undertaking as obliged under a contract and/or regulatory compliance. The Thai Government adopted and issued an Emergency Decree in mid-March 2020 aiming to halt the outbreaks of Coronavirus COVID-19. The virus started to appear in the Kingdom in January 2020 and was brought by visitors/carriers who came from or visited the originating territories and countries and returning Thai workers/persons from such places. Under this Emergency Decree and the notifications and/or orders executed by the Prime Minister and/or the competent officers appointed and empowered thereunder, all directions and any other measures adopted and executed by the said authorities constitute a force majeure or act of God situation under the referred provision.

We advise our clients and friends that the effectiveness of this provision towards the Pandemic Coronavirus whereby all debtors or obliged parties can refer to Section 8 of the CCC to defer or delay their dutiful performance under the regulation or the contract for a period of not less than 3 months according to the duration prescribed in the Emergency Decree. We have learned that banks, financial institutes, the Labour office, the Social Security Office, and the tax authority as well as other government enterprises including the power supply enterprise, the water supply enterprise,

and the telecommunication enterprise, are all concentrating on adopting the extension of payments and/or reducing premiums or fees to their customers.

#### 90-Day Report by Registered Mail

At this time, due to crowded conditions at Immigration offices around the county, Thailand’s Immigration Bureau (IB) is recommending that foreigners file their 90-Day Report using the IB’s online reporting portal or by registered mail. The following documents are required when filing the 90-Day Report by registered mail:

- Copy of all passport pages (up to the latest arrival stamp in the Kingdom or latest visa stamp)
- Copy of arrival/departure card TM. 6 (front and back)
- Previous notifications of staying over 90 days (if any)
- Completely filled in and signed notification form TM. 47
- Envelope with 5 Baht stamp affixed and return address of the foreigner for the officer in charge to send the lower part of form TM. 47 back after having received the notification. This part must be kept for reference and for future notifications of staying over 90 days.

All the documents must be sent by registered mail, and the postmark must be at least 7 days before the 90-day period expires. Foreigners residing in Bangkok with visas issued by the Immigration Bureau at Chaengwattana or the One Stop Service Center must use the address below. For those residing outside of Bangkok with visas issued by a Provincial Immigration Offices, the 90-Day Report must be sent to the designated Provincial Immigration Offices.

90 DAYS REGISTRATION  
IMMIGRATION DIVISION 1  
Government Complex Building B  
120 MOO 3, CHAENGWATTANA ROAD, SOI 7,  
LAKSI, BANGKOK. 10210

**Important note:** When reporting by registered mail, keep the receipt from the post office for verification purposes.

## Government Measures for Business Operators Affected by COVID-19

### 1. Department of Business Development

According to the Notification of the DBD Re: Measure to Support the Outbreak of Coronavirus Disease 2019 or COVID-19 which may impact convening Meetings of Juristic Entities, dated March 4, 2020, the DBD will allow (i) Limited companies, (ii) Public limited companies, (iii) Trade Associations, and (iv) Chambers of Commerce to convene the meetings after the prescribed legal period of time, provided that such Entities shall submit a clarification letter with the reasons for the interruption in convening the meeting to the Registrar after the accomplishment of such convening at a later time.

For clarification, limited companies and public limited companies should simultaneously submit clarification letters with a list of shareholders. For trade associations and chambers of commerce, the clarification letter should simultaneously be submitted with the financial statement.

The clarification letter can be submitted by 3 methods:

- Via DBD Website in Google Form
- Walk-In
- Registered mail

This measure also results in a postponement period to submit the financial statement and list of shareholders as it will be required to submit these to the Registrar after the meeting date. Thus, if the meeting date is postponed, the period for submitting the financial statement and list of shareholders will also be postponed. A summary for each category of juristic entities is as follows:

Limited Company	
Financial Statement (*Filing <b>within 1 month</b> from the date of approval by shareholder's meeting)	Filing Based on the meeting date as postponed
List of Shareholders (*Filing <b>within 14 days</b> from the date of shareholders' meeting)	
Public Limited Company	
Financial Statement (*Filing <b>within 1 month</b> from the date of approval by shareholder's meeting)	Filing Based on the meeting date as postponed
List of Shareholders (*Filing <b>within 1 month</b> from the date of shareholders' meeting)	
Trade Association / Chamber of Commerce	
Balance Sheet (*Filing <b>within 30 days</b> from the date of annual general meeting)	Filing Based on the meeting date as postponed
Limited Partnership / Juristic Person incorporated under foreign law / Joint Venture (Fiscal year ended during 31 October 2019 to 31 March 2020)	
Financial Statement (*Filing <b>within 5 months</b> from the closing date of accounting period)	Extended to within <b>(31 August 2020)</b>
<b>Remark:</b> Issued under the Notification of the DBD Re: Extension Period for Submitting Financial Statement of whom being responsible for the Preparation of Accounting in case of a Limited Partnership, Juristic Person incorporated under foreign law doing business in Thailand and Joint Venture under the Revenue Code, dated March 25, 2020	

## 2. Social Security Office

### 2.1 Reduction of Contribution Rate to SSO

	Reduce to	Application Period
Employer	4%	3 months (March - May 2020)
Insured under Section 33	1%	
Insured under Section 39	1.8%	

### 2.2 Extension Period- Remittance of Contribution

3-Month Extension for the Period during March-May 2020		
	Monthly Salary of	Remittance within
Employer		
Insured under Section 33	March 2020	15 July 2020
	April 2020	25 August 2020
Insured under Section 39	May 2020	15 Sept. 2020

### 2.3 Additional Relief Measures for the Insured under Section 33 Additional Unemployment Benefits resulting from Force Majeure (Effective from 1 March 2020 onwards)

- If employees are not allowed to work and are quarantined for 14 days by the order of the employer, resulting from such employees being close contact with persons with COVID-19, such employees can receive **50% of wages for no more than 180 days**
- For a business's temporary shutdown by government order, employees can receive **50% of wages for no more than 60 days**

#### Additional Compensation for Loss of Earnings in case of Unemployment

- For an insured's resignation, such insured can receive **45% of wage for no more than 90 days** (Effective for 2 years)
- For an insured being unemployed, such insured can receive **70% of wages for no more than 200 days** (Effective for 2 years)

### 2.4 Relief Measures for the Insured apart from being under Section 33

#### 5,000-Baht Handout for a period of 3 Months (April-June 2020)

Apart from informal workers without social security benefits, this measure also covers the following insured: (i) Insured under Section 33 (Only for the insured who remits contributions for less than 6 month), (ii) Insured under Section 39, and (iii) Insured under Section 40

## Summary of Laws on Tax Deduction and Tax Filing (January 2020 - March 2020)

### 1) Personal Income Tax

#### Filing of Tax Return and Tax Payment

Under the Notification of Ministry of Finance on period extension for personal income tax filing and making tax payment for assessable income for the 2019 tax year (No. 2), dated March 31, 2020, the deadline (30 June 2020) which has been extended from original deadline of 31 March 2020 for manual filing, and of 8 April 2020 for e-Filing under the Notification of Ministry of Finance on period extension for filing personal tax return and making tax payment for assessable income for the 2019 tax year, dated February 28, 2020, has been repealed and be as follows:

Personal Income Tax Return		
Form	Submission Period	
	Original	Extended to
P.N.D. 90 P.N.D. 91	31 March 2020	31 August 2020

In case of filing personal income tax return, and being eligible to make payment in instalments of 3 months, such instalment shall be made as follows:

Period	Conditions
1 <sup>st</sup> Payment	Made simultaneously with filing of tax return within extension period as mentioned above
2 <sup>nd</sup> Payment	Made within 1 month from the last day of making 1 <sup>st</sup> payment
3 <sup>rd</sup> Payment	Made within 1 month from the last day of making 2 <sup>nd</sup> payment

However, in case of default on payment for any period, such eligible person will be deprived of the right in instalments and will be under surcharge.

### 2) Withholding Tax

#### 2.1 Reduction of Withholding Tax Rate

Pursuant to the Ministerial Regulation (No. 361) regarding Income Tax, dated March 27, 2020 on, starting from April 1, 2020 onward, payers of income (Company / Juristic partnership) shall withhold the income paid to recipients with new reduced rates as follows:

▪ **1<sup>st</sup> Period**

The withholding tax rate will be **reduced to 1.5%**, instead of 3% between 1 April 2020 and 30 September 2020 for the following income paid to recipients. Tax filing can be made by both manual filing and via e-Withholding Tax

Categories of Income	Recipient	
	Ordinary Person	Company or Juristic Partnership*
<b>40(2)</b> Income derived from a post/work performance, e.g., fee, commission, discount, subsidy, gratuity, bonuses, house rent allowance, etc.	3%	1.5%
<b>40(3)</b> Only fee of goodwill, copyright or any other rights	3%	1.5%
<b>40(6)</b> Liberal Profession, namely (i) laws, (ii) arts of healing, (iii) engineering, (iv) architecture, (v) accounting, and (vi) fine arts	1.5%	1.5%
<b>40(7)</b> Income derived from contract of work where contractor has to provide essential materials apart from tools	1.5%	1.5%
<b>40(8)</b> Only income derived from hire of work, prize money, discounts or other benefits resulted from sales promotion and other services apart from public actor, advertisement, premium of non-life insurance, transport charge excluding fare of public transport, hotel service, restaurant service and premium of life insurance	1.5%	1.5%

▪ **2<sup>nd</sup> Period**

The withholding tax rate will be **reduced to 2%**, instead of 3% between 1 October 2020 to 31 December 2021 for the following income paid to recipients. To be eligible, the filing must be made via e-Withholding Tax only.

Categories of Income	Recipient	
	Ordinary Person	Company or Juristic Partnership*
<b>40(2)</b> Income derived from a post/work performance, e.g., fee, commission, discount, subsidy, gratuity, bonuses, house rent allowance, etc.	3%	2%
<b>40(3)</b> Only fee of goodwill, copyright or any other rights	3%	2%
<b>40(6)</b> Liberal Profession, namely (i) laws, (ii) arts of healing, (iii) engineering, (iv) architecture, (v) accounting, and (vi) fine arts	2%	2%
<b>40(7)</b> Income derived from contract of work where contractor has to provide essential materials apart from tools	2%	2%
<b>40(8)</b> Only income derived from hire of work, prize money, discounts or other benefits resulted from sales promotion and other services apart from public actor, advertisement, premium of non-life insurance, transport charge excluding fare of public transport, hotel service, restaurant service and premium of life insurance	2%	2%

**Remarks:**

- (\*) Recipient as a company or juristic partnership exclude a foundation or association engaging in business, and earning income, as well as a foundation or association as prescribed by Minister of Finance under Section 47(7)(b)

## 2.2 Instruction for Payers of Assessable Income under Section 40 of the Revenue Code to Withhold Income Tax

According to the Order of Revenue Department No. Tor.Por. 324/2563 on instruction for payers of assessable income under Section 40 of the Revenue Code to withhold income tax, dated March 30, 2020, such payers shall be responsible for withholding tax for the assessable income paid between 1 April 2020 to 30 September 2020 to the recipients as follows:

Payers (Company / Juristic Partnership / other juristic person)	Recipient	Withholding Tax Rate	
		Original	New
Payers of assessable income under 40 (2)	Company or juristic partnership carrying on business in Thailand other than that stated in (2)*	3%	1.5%
Payers of assessable income under 40 (3)	Company or juristic partnership carrying on business in Thailand other than that stated in (2)*, for only fee of goodwill, copyright or any other rights	3%	1.5%
Payers of assessable income under 40 (6)	a person subject to personal income tax or corporate income tax other than that stated in (2)*, only domiciled in Thailand, or is a resident of Thailand, or is carrying on business in Thailand, as the case may be	3%	1.5%
Payers of assessable income from hire of work	a person subject to personal income tax, only income derived from hire of work under Section 40(7) or (8) of the Revenue Code	3%	1.5%
	Company or juristic partnership incorporated under Thai laws, excluding foundation or association		
	Company or juristic partnership incorporated under foreign laws, carrying on business in Thailand, having a permanently established branch in Thailand		
Payers of assessable income under 40 (8), only from other services apart from hire of work in Clause 8 and Clause 12, public actor, advertisement, premium of non-life insurance, transport charge excluding fare of public transport hotel service, restaurant service and premium of life insurance	a person subject to personal income tax	3%	1.5%
	Company or juristic partnership carrying on business in Thailand, excluding foundation or association		
Payers of prize money, discounts or other benefits resulted from sales promotion	a person subject to personal income tax	3%	1.5%
	Company or juristic partnership carrying on business in Thailand, excluding foundation or association		

### Remarks:

- (\*) Recipient as a foundation or association engaging in business, and earning income, exclude a foundation or association as prescribed by Minister of Finance under Section 47(7)(b)

### 3) Corporate Income Tax

#### 3.1 Filing of Tax Return and Tax Payment – General

Under the Notification of Ministry of Finance on period extension for corporate income tax filing and making tax payment for assessable income for the 2019 tax year (No. 2), dated March 31, 2020, the summary is as follows:

<b>Corporate Income Tax</b> (ONLY FOR Companies / Juristic partnerships not registered with the Stock Exchange of Thailand)		
<b>Form</b>	<b>Original</b>	<b>New</b>
P.N.D. 50 P.N.D. 55 and Disclosure Form	during <b>April 2020 to August 2020</b>	Within <b>(31 August 2020)</b>
	Remark: 8-day extension will be applied to only e-Filing for the due date below under the Notification of Ministry of Finance on extension for online tax return filing and tax payment, dated January 28, 2019	
	Due date of <b>24 August 2020 to 31 August 2020</b>	Extended to <b>(8 September 2020)</b>
P.N.D. 51	during <b>April 2020 to September 2020</b>	Within <b>(30 September 2020)</b>
	Remark: 8-day extension will be applied to only e-Filing for the due date below under the Notification of Ministry of Finance on extension for online tax return filing and tax payment, dated January 28, 2019	
	Due date of <b>23 September 2020 to 30 September 2020</b>	Extended to <b>(8 October 2020)</b>

#### 3.2 Filing of Tax Return and Tax Payment – For Business Operator in case of Business Closure

Under the Notification of Ministry of Finance on extension for filing tax return, tax remittance and tax payment for whom being responsible for remitting withholding tax, corporate income tax, value added tax, special business tax and stamp duty, dated March 31, 2020, the summary is as follows:

<b>Form</b>	<b>Submission Period</b>	
	<b>Original</b>	<b>Extended to</b>
P.N.D. 1 P.N.D. 2 P.N.D. 3 P.N.D. 53 P.N.D. 54 Por.Por. 36	March 2020	Manual Filing 7 April 2020
		e-Filing 15 April 2020
	April 2020	Manual Filing 7 May 2020
		e-Filing 15 May 2020
		<b>15 May 2020</b>  (both manual filing and e-Filing)
Por.Por. 30 Por.Tor. 40*	March 2020	Manual Filing 15 April 2020
		e-Filing 23 May 2020
	April 2020	Manual Filing 15 May 2020
		e-Filing 23 May 2020
		<b>23 May 2020</b>  (both manual filing and e-Filing)



Form	Submission Period	
	Original	Extended to
Aor.Sor. 4 Aor.Sor. 4Kor Aor.Sor. 4Khor	1 April 2020 to 15 May 2020	<b>15 May 2020</b>

- \* Excluding SBT from the sale of an immovable property in a commercial or profitable manner, irrespective of the manner in which such property is acquired.

### **Legal Scope for an Electronic Meeting of a Registered Partnership, Limited Company, or Public Company Limited<sup>1</sup>**

1. <sup>2</sup>The chairperson of the meeting will determine that the meeting will be convened via electronic media. The person responsible for organizing the meeting shall proceed to arrange the procedural meeting control system of such meeting in writing in advance.
2. <sup>3</sup>An invitation to an E-meeting and meeting documents for such E-meeting shall be implemented according to requirements and timeline as specified by the governing law, or be notified via e-mail. However, such notice shall be sent in accordance with the prescribed timeline and be published in a newspaper as required by the applicable by-laws
3. <sup>4</sup>The Controlled Electronic System must contain the fundamental components as described below:
  - 3.1 Enable all participants to communicate by voice or by both audio and video through information and communication technology or both wired and wireless systems.
  - 3.2 Connect two or more meeting locations together.
  - 3.3 Enable all participants to communicate or interact both ways back and forth.
  - 3.4 Provide equipment to import data from one place to another via Information and Communication Technology or a Telecommunications system, for example, mobile phone, microphone, computer, and fax.
  - 3.5 Provide equipment to connect or convert audio signals or both images and sounds that are suitable for information technology and communication which facilitate viewing and listening for all participants.
4. <sup>5</sup> Make an audio recording or both a visual and audio recording of all participants for the whole session of the meeting.  
The data recording set above must be recorded in the form of electronic data via an electronic device with Teleconference Security Standards as prescribed.
5. <sup>6</sup>A meeting as required by the law conducted through devices with participants consisting of at least one third of the quorum must be in the same meeting location, and all participants must be in the Kingdom during the meeting
6. <sup>7</sup>During a meeting, all participants must be able to see the meeting information being presented in the meeting via their own device or communication device for the whole session.

<sup>1</sup> Clarification Note of Department of Business Development date 23 September 2559 or 24 March 2563

<sup>2</sup> Article 6 Announcement of Ministry of Digital Economy and Society (MDES) Re: Conference Security Measure

<sup>3</sup> Article 5 Announcement of National Council for Peace and Order No.74/2557 Re: Teleconference through Electronic Devices

<sup>4</sup> Article 5 of the Announcement referred to in Article (1)

<sup>5</sup> Article 4 paragraph 2 of the Announcement referred to in Article (1)

<sup>6</sup> Article 1 of the Announcement referred to in Article (2)

<sup>7</sup> Article 8 of the Announcement referred to in Article (1)

7. <sup>8</sup>If there are any emergency circumstances, the Chairperson of the Meeting or Meeting organizer must be able to cut the audio or video signals or both the audio and video signals, and stop sending data to the participants or the media devices within the controlled system immediately.

## **ASEAN Economic Community News**

### **Vietnam ASEAN Chair Priorities**

The 26<sup>th</sup> ASEAN Economic Ministers (AEM) Retreat and the ASEAN Business Advisory Council (ASEAN-BAC) Consultation Meeting was held this month in Da Nang, Vietnam. Delegates from the ASEAN member states approved Vietnam's 12 priorities as the ASEAN Chair in 2020 and also agreed on an additional 62 measures to be prioritized in the ASEAN Agenda 2020. Vietnam's 12 priorities include commodities commercialization, facilitation of trade and movement of skilled workers, one-stop shop ASEAN policies, competition policies, consumer protection, ASEAN globalization, and boosting the role of small and medium-sized enterprises (SMEs). A 13<sup>th</sup> initiative regarding international roaming fees was tabled as the delegates required further research into technical details.

### **Cybersecurity Survey**

A recent survey by a multinational cybersecurity and anti-virus provider shows that businesses in Southeast Asia are becoming more willing to invest more into cybersecurity after the recent high-profile security breaches in the region. 79% of those surveyed confirmed their plans to increase IT security regardless of overall cost. The survey also found that over 10% of respondents in the region were using freeware solutions and 20% were using software licensed for home use only. However, the survey found that 96% of work stations in Southeast Asia had security solutions installed, higher than the Asia Pacific average of 92% and the global average of 82%.

## **Cambodia News**

### **Trade Agreement Suspension**

The European Union has partially suspended Cambodia's duty-free preferences under the Everything but Arms (EBA) deal due to the country's human rights record. The suspension will affect 20% (1 billion Euros) of Cambodia's yearly exports to the European Union. This will seriously distress Cambodia's garment, textile, and shoemaking industries which employ more than 700,000 workers. Cambodia is the EU's sixth largest garment supplier, and the EU imports over 45% of all garments made in the country. Cambodia exported US\$4 billion worth of clothing and textiles to the EU in 2018.

## **Indonesia Update**

### **Sea Toll Routes**

Indonesia announce that it will increase its number of sea toll routes to 26 mainly in the eastern areas of the country to reduce the shipment of goods from western Indonesia. The sea toll program was introduced to improve connectivity between islands and make the distribution of goods easier and more effective. The program includes a massive infrastructure development plan for building and modernizing seaports. Industries built in the eastern areas of Indonesia to meet the needs of those areas will be eligible for tax allowances and longer tax holidays.

## **Vietnam News**

### **Business License Tax Exemption**

Vietnam's Decree 22/2022/ND-CP (Decree 22) exempting Business License Tax (BLT) for newly established businesses in their first year came into effect on February 25, 2020. The BLT is an indirect tax that all domestic and foreign companies, organizations, individuals are required to pay on an

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<sup>8</sup> Article 7 of the Announcement referred to in Article (1)

annual basis. Under Decree 22, the following businesses and organizations in their first year of business are eligible for the BLT exemption:

- Newly established businesses
- Households or individuals doing business for the first time
- Representative offices, branches, or business locations established during the exemption period
- Small and medium-sized businesses (SMEs) that have converted from household businesses are exempt for 3 years
- General education and public preschool businesses

## **Myanmar Watch**

### **Trademarks**

Myanmar's new Trademark Law was enacted on January 30, 2019. The 'soft opening' period under the new law is December 20, 2019 to May 19, 2020. During this period, trademarks previously recorded with the Office of Registration and Deed need to be reregistered in order to be protected by under the new Trademark Law and no new trademark applications will be accepted. Myanmar is implementing a first-to-file system where earlier filed applications will take precedence at time of grant. New trademark applications can be filed once the 'grand opening' period commences on May 20, 2020.

## **Brunei Bulletin**

### **Digital Services Tax**

Brunei's Ministry of Energy, Manpower & Industry says that JobCentre Brunei has rejected 48% of all applications to recruit foreign workers from late 2017 to present. The curbs on foreign hiring are part of the government's initiatives to deal with Brunei's high unemployment rate that was 9.3% in 2017 and 8.7% in 2018.

### **Disclaimer**

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