

ASEAN TODAY

REGIONAL LEGAL & BUSINESS NEWS

August 2020

ASEAN Economic Community News

ASEAN-Japanese FTA

The first protocol to amend the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) came into force on August 1, 2020. The amended AJCEP is a free trade agreement between Japan and five ASEAN member states – Laos, Myanmar, Singapore, Thailand, and Vietnam. The original AJCEP came into force in 2008 and covers trade in goods and services, investment, and economic cooperation. The first protocol added provisions on trade in services, movement of business people and investments, and is expected to strengthen reciprocal economic ties between all parties. The protocol will enable ASEAN and Japan to share the large resources available through joint collaboration and promote the growth of the trading and service industries. The AJCEP will also make it easier for Japanese companies to establish bases in ASEAN countries and move components and products across borders.

Virtual Banking Growth

Experts say that while 290 million people in Southeast Asia are unbanked, the region is experiencing a fintech boom and banking competition is expected to intensify as virtual banks enter the regional market. Only 18% of the population in Southeast Asia has access to credit; however, 37% of the population is digital ready and this will provide a supportive environment and allow consumer lending to catch up as income levels rise. A global credit ratings agency says that Indonesia and the Philippines have the largest market potential in ASEAN due to the large unbanked segment of their population and low household leverage. They also say that while online banks could put pressure on the profitability of established banks, it is unlikely in the near term because the coronavirus pandemic has affected the virtual banks' target segments.

The situation has also forced established banks to accelerate their digitalization process which could also diminish virtual banks' cost advantages.

Vietnam News

Regional Taxation Report

The Vietnam Institute for Economic and Policy Research (VEPR), Oxfam, Tax and Fiscal Justice Asia, and the Prakarsa and Vietnam Tax Justice Alliance (VATJ) released a report, Towards Sustainable Tax Policies in the ASEAN Region: the Case of Corporate Tax Incentives, which proposes solutions to help ASEAN improve tax policies and actions and increase domestic revenue to fund public goods. According to the report, 11% of ASEAN's population struggled in poverty before COVID-19 and the number is expected to rise rapidly due to the pandemic. However, in order to overcome the inter-related challenges of poverty, widening income inequality, and climate changes, governments need more tax revenues. Yet, in ASEAN, revenue collection levels as a ratio to GDP are very low compared to other regions. Solutions in the report include setting up a blacklist of tax incentives to phase out across ASEAN and having ASEAN member states agree on a common minimum tax standard.

Myanmar Watch

Anti-Corruption Handbook

The Myanmar Center for Responsible Business in collaboration with the Myanmar Anti-Corruption Commission, the Union of Myanmar Federation of Chambers of Commerce, and the UN Development Program published 'Business Integrity: A Handbook for Myanmar Businesses' earlier this month. The Handbook provides guidance for businesses in Myanmar to support their anti-corruption programs and uses practical examples from Myanmar and the region. The Handbook is structured around the eight principles issued by the Anti-Corruption Commission that companies should follow to combat corruption. It offers suggestions on how companies can put the eight principles into practice and also includes guidelines for a company's code of conduct and gift policy. The Handbook is available in English and Burmese.

Brunei News

Halal E-Commerce Platform

The Brunei BIMP-EAGA (Brunei-Indonesia-Malaysia-Philippines East ASEAN Growth Area) Business Council (BDBEBC) strategic initiative is to promote the halal economy through the private sector and to brand Brunei as the trade hub for the global halal market. At an event earlier in August, the BDBEBC launched a new e-commerce platform and a 3-in-1 Islamic cleanser and soap. Initially, products on the e-commerce platform will come from BIMP-EAGA and then branch out into halal compliant products from around the world.

Singapore Update

New IP Initiatives

At Singapore's annual IP Week, the Intellectual Property Office of Singapore (IPOS) announced that it was rolling out new initiatives to help businesses that use intellectual property to thrive during the COVID-19 pandemic. One initiative is SG IP FAST which is an enhancement of the SG Patent Fast Track launched by IPOS in April 2020. SG Patent Fast Track accelerates grants of patent applications in all technology fields to six months. SG IP FAST extends beyond patents and accelerates the registration process for trademarks and registered designs. IPOS partnered with the Singapore Business Federation for the Workforce for IP-Savvy Enterprises (WISE) initiative. WISE is a pilot program that will allow Singaporean enterprises to identify new business opportunities and acquire new capabilities through intellectual property and emerge stronger from the COVID-19 pandemic. The program will also help companies build their human resources capabilities to hire, nurture and optimize their IP talents.

Malaysia Bulletin

Global Business Complexity Index

While the ease of doing business in Malaysia has improved over the last ten year, the country is still one of the most complex places in the world for foreign companies to do business in. According to the Global Business Complexity Index (GBCI) 2020, Malaysia is the 9th most complex country in the world and the 3rd most complex in Asia for foreign businesses. The report says that Malaysia's

position is due to high complexity; for example, the incorporation process involves over 30 interactions with different governing bodies in which businesses have to register with multiple authorities.

Philippine Watch

Personal Remittances

In 2019, personal remittances by overseas Filipinos reached US\$33.5 billion which accounted for 9.3% of the Philippine GDP and 7.8% of the country's gross national income. However, due to the pandemic and the expected return of over 400,000 overseas workers, experts believe remittances will fall by as much as US\$6 billion in 2020. Lower remittances do not only affect Philippine households, but also impact tax and foreign exchange revenues, as well as cushioning the economy from external shocks.

ASEAN COVID-19 Immigration Update

Brunei: There remains a temporary suspension on all entry visas for foreign nationals (whether issued by the Brunei High Commissions, visas-on-arrival, or visa-exempt travel). All new immigration-related applications (including for work authorization) remain suspended as well, although renewals continue to be processed. There is also an ongoing exit ban from Brunei for citizens, permanent residents, and long-term visa holders, with limited exceptions for the purpose of seeking medical treatment, attending court hearings, or continuing studies overseas. Such travels are subject to approval from the Prime Minister's Office and a travel application must be sent via e-mail (along with scanned copies of relevant documentation).

Cambodia: There remains a suspension on all visa-exempt entry, visas-on-arrival, and e-Visas. Those wishing to enter must obtain a visa at the Cambodian Embassy/Consulate in their home country. Those who may be permitted to enter must carry with them a negative Covid-19 test result (issued within 72 hours of their date of arrival). They are also required to deposit USD 2,000 upon arrival (which will be returned to them once all the passengers arriving on the same flight have tested negative for the virus). Such foreign

nationals also need to purchase a local health insurance package for any potential medical treatment and must still self-quarantine for 14 days after arrival (and undergo a second Covid-19 test on the 13th day).

Indonesia: There remains an entry and transit ban on foreign national visitors, including those who already hold Indonesian Visit Visas, Business Visas, and Limited Stay Visas (long-term stay permit holders are exempted). The Ministry of Manpower has reopened but has suspended the issuance of new work permits, except for very limited circumstances (although renewals are still being processed). The Directorate General of Immigration has also reopened but with limited services (although they have resumed accepting Stay Permit renewal applications). The Indonesian consular posts abroad have also suspended the issuance of visas. For those foreign nationals who are able to enter Indonesia, they must observe very stringent medical and quarantine requirements, including a 14-day quarantine at a government facility or supervised self-quarantine. They will also be subject to a Covid-19 assessment upon arrival, including a Rapid Test and/or PCR test.

Laos: All land, air, and sea borders remain closed until further notice and visas-on-arrival and visa-exempt entry remain suspended at this time. Flights to the country remain suspended until 31 August 2020. Those who are able to enter (on an exceptional basis) must carry with them a negative Covid-19 test result, issued within 72 hours prior to their departure from their home country. They will then be subject to medical screening and 14-day quarantine, particularly for those who enter from countries with more than 100 confirmed cases of Covid-19 or those who have previously been in contact with people diagnosed with Covid-19.

Malaysia: There remains an entry ban on tourists and foreign visitors through 31 August 2020. Special permission from the Director-General of Immigration is required for those seeking re-entry during the period of the entry ban. Holders of certain long-term work passes (and their accompanying dependents) may be able to re-enter Malaysia without having to obtain separate entry approval from the Director-General of Immigration (in most

circumstances). However, those who departed Malaysia after 11 July 2020 will require entry permission. There is also a ban on overseas travel for Malaysians and expatriates in Malaysia through 31 August 2020 (with limited exceptions). Recently, Malaysia and Singapore announced the Reciprocal Green Lane (RGL) and Periodic Commuting Arrangement (PCA) schemes to cater to different groups of travellers between the two countries, although these schemes are highly regulated and restricted.

Myanmar: Visa-exempt travel is currently suspended until 31 August 2020 (likely to be extended). Visas-on-arrival and e-Visas also remain suspended until 31 August 2020. There are also no international flights to any international airport in Myanmar until 31 August 2020 (nor any entries through land borders for foreign nationals). For anyone who is permitted to enter, the government is conducting temperature and travel history screening at all ports of entry. Incoming Myanmar nationals are required to present a medical certificate showing that they have no symptoms of acute respiratory illness before boarding any airline destined for Myanmar. There is also an enforced 28-day quarantine for all travellers (including 21 days in a government facility, followed by 7 days at home). Travellers can then leave quarantine after obtaining a negative Covid-19 swab test result.

Philippines: The Philippines continues to impose a suspension on the issuance of entry visas to all foreign nationals. Visas which have already been issued (but not yet used to enter) are deemed cancelled. Visa-free entry privileges for all eligible foreign nationals have also been suspended and there remains an entry ban in place for all foreign nationals entering the country (with some limited exceptions, depending on their visa category and/or family status), including those entering on visa waiver or visa-exempt status. The Philippines imposed one of the longest "lockdowns" in the region, also known as their Community Quarantine. There are varying degrees of the Community Quarantine, including the strictest, the Enhanced Community Quarantine (ECQ) (in which most government offices are under a skeletal

workforce and only handling the most urgent and essential applications). Currently, the country has moved out of the most recent ECQ and has resumed accepting visa renewal applications.

Singapore: For foreign nationals who are currently in Singapore, employers can apply for work passes. For foreign nationals who are overseas, approvals for any new applications will be limited. Renewal applications for applicants in Singapore are being processed and issued at this time. There remains an entry and transit ban for all short-term visitors from anywhere in the world, except for travellers who have obtained SafeTravel Pass or Air Travel Pass (those from Brunei or New Zealand, from 1 September 2020). Pre-entry approval from the Ministry of Manpower (MOM) is required for work pass holders of all nationalities, their dependents, and those with In-Principal Approvals (IPA) entering Singapore, except for Employment Pass or S Pass holders who are Malaysian nationals or Malaysian permanent residents who have received approval under the Periodic Commuting Arrangement (PCA) scheme to travel to Singapore by land. Holders of Long-Term Visit Pass issued by the Immigration and Checkpoints Authority (ICA) and those with IPAs entering Singapore require pre-entry approval from the ICA.

Vietnam: Despite a relatively low number of Covid-19 cases, Vietnam has maintained strict suspensions on the entry of foreign nationals, including the suspension of visa-exempt entry for all nationalities until further notice. The issuance of entry visas has also been suspended until further notice (except for special cases granted exceptional authorization from the government). In general, there is a temporary suspension on work permits, although both new and renewal work permit applications are being accepted in Hanoi and Ho Chi Minh City (in some circumstances). As of June, the various provincial Labor Department offices have begun to implement a new directive to allow certain foreign nationals to apply for exceptional approval to enter (under an “Entry Demand Report” process). In parallel, the company would also need to request special entry approval by submitting a request

to the relevant authorities, laying out a strong business justification and complete details of the travellers and their quarantine plans.

Our Special Thanks to Fragomen, our Immigration Partner, for providing the information in this ASEAN COVID-19 Update.

THAILAND LEGAL REVIEW

Corporate Law News

Income Tax Extension Deadline for 2020 Additional Criteria and Conditions of Tax Benefits

Royal Decree (No. 709) grants a debtor exemptions for income tax, Value Added Tax (VAT), Special Business Tax (SBT), and Revenue Stamp from the income received from the transfer of assets mortgaged with creditors to any person other than the creditors participating in debt restructuring, including the execution of instruments resulting from such transfer of assets. Such exemptions shall also comply with the additional criteria and conditions issued under the Notification of the Director-General of Revenue Department (no. 22) (the “Notification”), dated July 29, 2020, where the debtor, creditor, or assignee of an asset must jointly prepare the Certificate of Transfer of the asset which the debtor made to any person other than the creditor, and the amount received from such transfer be repaid to its creditor. Additionally, such Certificate must contain all details in accordance with the Notification and be submitted to (i) the Local land officer and (ii) Director-General of the Revenue Department

Amendment of Activities Eligible for Investment Promotion

On July 29, 2020, the Board of Investment (BOI) issued Notification No. Sor. 4/2563 that amends the activities eligible for investment promotion under the stronger promotion of agriculture & agro-industries, including the utility of agricultural waste under the Bio-Circular-Green (“BCG”) Model comprising the Bio Economy, the Circular Economy, and the Green Economy, as well as the Smart City System. The activities, conditions and incentives under BOI are amended as follows:

Activities	Conditions	Incentives
1.8 Grading, packaging and storage of plants, vegetables, fruits or flowers	1. Projects using advanced technology, e.g. fruit ripeness sensor, radio frequency pest control, nuclear magnetic resonance	A2
	2. Projects using modern technology, e.g. color sorter, vapour heat treatment to kill fruit fly eggs, seed coating	A3
	3. Rice grading - Use of advanced technology - No use of advanced technology	A2 B1
1.15 Manufacture of products from agricultural by-products or agricultural waste, or products derived from agricultural by-products or agricultural waste (except for those with uncomplicated production processes, e.g. drying, dehydration)		A4
1.19 Cold storage, or cold storage and cold storage transportation	Must use a refrigerant with low environmental impact by taking account of related indicators, e.g., Global Warming Potential (GWP)	B1
1.22 Manufacture of animal feed production and animal food ingredients	<u>1st case:</u> 1. Certification of food safety management systems are required, e.g. ISO 22000 or as acknowledged by Global Food Safety Initiative (GFSI), within the full operation start-up date specified in the investment promotion certificate 2. Having a traceability system 3. Providing evidence of submission of or exercising promotion privileges for corporate income tax exemption	A3
	<u>2nd case:</u> 1. Global Certifications, e.g. HACCP or GMP, are required within the full operation start-up date specified in the investment promotion certificate 2. Being a juristic person that never previously received any global standards for the manufacture of animal feed production and animal food ingredients 3. Having a traceability system 4. Providing evidence of submission of or exercising promotion privileges for corporate income tax exemption	A4
	<u>3rd case:</u> In case of taking no action according to the 1 st or 2 nd case	B1
1.24 Plant Factory	1. Growing plants in buildings designed only for a closed plant production system 2. Providing the installation of a plant factory environmental control system for both physical	A3

	<p>environments, e.g., control of light, temperature, moisture, carbon dioxide concentrations, other minerals, and biological environments, such as contamination of pathogens and insect from water, air and worker</p> <p>3. Having a traceability system</p>	
7.31 Smart city area development business	<ol style="list-style-type: none"> 1. Having shareholders with Thai nationality of not less than 51% of the registered capital 2. Providing communication infrastructures that can facilitate smart systems, such as Fiber Optic and Public Wi-Fi, etc. 3. Providing Smart Environment services and also at least one more of other smart system services from the six systems, namely Smart Mobility, Smart People, Smart Living, Smart Economy, Smart Governance and Smart Energy 4. Providing data storage and management systems with the connection or permission to use data for the management and service in the smart city (Open Data Platform) 5. Project must be approved by the Board or agencies responsible for smart city development before applying for the investment promotion 6. Determining and proceeding with the targets conforming to the area development target 7. Organizing public hearings and proposing public participation plan 8. The income entitled to corporate income tax exemption must include income derived from the service provided in the areas developed by the use of smart systems as approved by the Board 9. If the business is located in the EEC area, it is eligible for a 50% corporate income tax reduction for 5 years from the date on which the corporate income tax exemption period expires 	A2
7.32 Smart city system development business	<ol style="list-style-type: none"> 1. Project must be developed, installed, and provide any one or more proper aspects of smart city system services as stipulated by the Board, for example, Smart Mobility, Smart People, Smart Living, Smart Economy, Smart Governance, Smart Energy, and Smart Environment, etc. 2. Project must be a part of a Smart City Development approved by the Board or agencies responsible for the smart city development only 3. If the project is located in the EEC area, it is eligible for a 50% corporate income tax deduction for 5 years from the date on which the corporate income tax exemption period expires 	A2

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