

# ASEAN Today

## Regional Legal & Business News

October 2021

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### ASEAN Economic Community News

#### New US-ASEAN Initiatives

The United States announced that it will provide US\$102 million in new initiatives to help expand the US-ASEAN strategic partnership. The different initiatives include US-ASEAN Health Futures which addresses the current pandemic and is also meant to strengthen ASEAN's ability to prevent, detect, and respond to future zoonotic and other infectious disease outbreaks. Also, the expansion of the United States Agency for International Development's (USAID) support for multiple programs including the ASEAN Single Window as part of global development of interoperable single window systems, expanding smart power efforts through the Southeast Asia Smart Power Program to decarbonize and strengthen the region's power systems, investing in the new Sustainable Fish Asia project, launching the Smart Transport Asia program, and initiating the US-ASEAN Science and Technology Innovation Cooperation Program (STIC). The US-ASEAN Climate Futures initiative is dedicated to tackling the climate crisis and keeping the urgent goal of limiting global warming to 1.5 degrees Celsius within reach.

#### Regional Clean Energy Concerns

Advancing the world's energy transition to a carbon-free future is not just about climate change, it's also about future economic growth. ASEAN is committed to a target of 23% renewable energy in total primary energy demand by 2025, and experts say that the conditions for renewable energy in the region are favorable, but achieving the target will require swift action on the bottlenecks to progress. Economic growth requires a steady and secure energy supply, and the ASEAN region has real challenges in energy security. The ASEAN member states do not produce sufficient supply to meet their own needs and rely on imports that are predominately fossil fuels. Additionally, growing energy demand

from China and India is also putting pressure on ASEAN countries. Experts say that there is a current pipeline of 800 clean energy projects across the region that if realized will have an investment potential of US\$316 billion, an emission-saving potential of 229 metric tons of carbon dioxide, and could generate 800,000 jobs.

#### Non-Tariff Measure Toolkit

A key part of the ASEAN Economic Community is for ASEAN to become a large, dynamic single market and production base by harmonizing standards and removing both tariffs and non-tariff barriers to intra-ASEAN trade. While excellent progress has been made on the removal of tariffs, the number of non-tariff barriers (NTBs) has actually increased by 60% since the launch of the ASEAN Economic Community in 2015. At a recent meeting, as a sign that ASEAN may be focusing more on the reduction of NTBs, ASEAN Economic Ministers signed off on a Non-Tariff Measures Cost Effectiveness Toolkit that is the number one priority economic deliverable for Brunei during its ASEAN chairmanship year. The Toolkit will allow all ASEAN member states to examine all existing non-tariff measures and identify which ones are non-tariff barriers.

#### ASEAN IP Enforcement

The first ASEAN IP Enforcement Week, part of the ASEAN Working Group on IP Cooperation (AWGIPC), was held this month and added new deliverables to fight online fakes in the AWGIPC's recently released mid-term update to its 10-year Intellectual Property Rights Action Plan 2016-2025 (IPR Action Plan). The two new deliverables address online enforcement. The first is the creation of an information exchange for online enforcement. This will allow ASEAN governments and brand owners to share important data on the patterns of online infringement. The second is the creation of ASEAN guidelines for online enforcement which will help harmonize the approach to fighting online counterfeits across ASEAN.

#### Malaysia News

##### Smart Manufacturing

A new report by the Malaysian Investment Development Authority (MIDA) says that while Malaysia remains a key regional destination for

high-value manufacturing and global services, the country's industries need to adopt smart manufacturing to take advantage of the expected growth potential. However, experts say that for smart manufacturing to be successful, industries need to first implement smart systems. Manufacturing companies have tended to maintain legacy systems and processes, but with the current challenges all businesses are facing, manufacturers must evaluate their manufacturing chain and carefully decide on what types of technology they should invest in.

## Indonesia Update

### New Tax Law

Indonesia approved its new Harmonized Tax Law (HTL) this month that will overhaul the existing tax structure in order to optimize revenue collection and improve tax compliance. The HTL will raise value added tax (VAT) in 2022, introduce a new carbon levy, and cancel a planned corporate tax cut. Under the FTL, VAT for almost all goods and services will increase from the current 10% to 11% in April 2022 and to 12% by 2025. 25% of Indonesia's tax revenue in 2020 came from domestic VAT. Indonesia's Finance Minister says the new fiscal measures will increase 2022's tax revenue by around 139.3 trillion rupiah (\$9.80 billion) and will take Indonesia's tax ratio to 9.22% of GDP, from 8.44% without the new law.

## Cambodia Bulletin

### New Competition Law

Cambodia adopted its first competition law this month that includes all three traditional pillars of enforcement – anticompetitive agreements, abuses of dominance, and merger control. The new competition law is composed of seven chapters and 41 articles and is aimed at shaping fair business practices, promoting economic efficiency and shoring up new businesses, protecting Cambodia's economy from harmful anti-competitive behaviors, and assisting customers in procuring a broader range of diverse, high-quality goods and services at lower prices. The new law also prescribes potential jail time for cartelists. Cambodia is the final ASEAN country to adopt a competition law.

## Vietnam Watch

### E-Commerce Taxation Guidelines

Vietnam's Ministry of Finance (MOF) issued Circular No. 80/2021/TT-BTC (Circular 80) this month that provides the implementing guidelines on the Law on Tax Administration and Government Decree No. 126/2020/ND-CP. Circular 80 includes the tax administration provisions for e-commerce businesses, digital-based businesses, and other overseas service suppliers with no permanent establishment (PE) in Vietnam. Circular 80 includes the definition for e-commerce activities and digital-based businesses, the concerned entities for tax registration, declaration and payment, tax registration, declaration and payment process for overseas suppliers, how to declare and pay taxes in Vietnam on goods from overseas suppliers not registered in Vietnam, and how to claim tax relief according to tax treaties.

## Singapore News

### Renewable Energy Certificates

As part of its plans to decarbonize the country's power sector and develop a regional power grid, Singapore announced that it will launch standardized guidelines for renewable energy certificates (RECs). The RECs are market-based instruments verifying that electricity was generated from renewable energy sources. One REC verifies that one megawatt of energy was generated from a renewable energy source. The guidelines are the first of their kind in Southeast Asia and define renewable energy sources eligible to generate RECs.

## THAILAND LEGAL REVIEW

## Immigration News

### Quarantine Exemption

Effective November 1, 2021, fully vaccinated travelers arriving by air from 63 Countries are exempted from Quarantine. For all other travelers, the previous restrictions will still apply.

### Pre-Arrival:

Travelers must be vaccinated and have resided in an eligible country for at least 21 consecutive days prior travel to Thailand.

Travelers must show the following documents prior to entering Thailand:

- A certificate of Entry or Thailand Pass
- A medical certificate with an RT-PCR laboratory result indicating that COVID-19 was not detected that was issued no more than 72 hours before departure
- A COVID-19 health insurance policy with a minimum coverage of US\$50,000 per traveler
- A confirmation of booking (and receipt) of at least 1 night in an [Amazing Thailand Safety and Health Administration \(SHA\) Plus](#) or certified accommodation.
- A vaccine certificate to prove that they are Fully Vaccinated issued no less than 14 days prior travel to Thailand with a vaccine registered with the MoPH or approved by the World Health Organization (WHO).
- For travelers with accompanying unvaccinated children under 12, a Medicate Certificate with a RT-PCR laboratory result indicating that COVID-19 was not detected that was issued no more than 72 hours before departure is required.

Airports at Suvarnabhumi, Don Mueang, Chiang Mai, Phuket, Samui, U-Tapao and Buriram (Chartered Flights only).

- Certificate of Entry (COE) to Thailand with effect from 1 November 2021. The COE system will be replaced by Thailand Pass. Travelers who wish to travel to Thailand must register their details at the Thailand Pass website ([tp.consular.go.th](http://tp.consular.go.th)) at least 7 days before their departure date. Travelers who have already obtained a COE are not required to undergo the new Thailand Pass process.

**Post Arrival:**

- Undergo Immigration and Customs procedures (Entry Screening) and declare the above documents.
- Proceed directly to the reserved hotel or designated hospital for COVID-19 tests (RT-PCR method) at their own expense on the arrival date from the airport with designated transportation in sealed route within 2 hours and await the test results in the accommodation.
- Additional RT-PCR tests if the length of stay is less than 7 days are required on Day 6 or 7 or as per the MoPH's guidelines.
- Download and install the Thailand Plus application and Morchana tracing application. This app must be kept on at all the times as the foreigner moves to different locations in Thailand.

**NOTE:**

- For the Sandbox Schemes, travelers must arrive through the International

## Corporate Law News

### Amendment of Investment Promotion for Digital Industry

For the purpose of providing flexibility to investment promotion and improvement to Thai IT personnel, including creating a business development process in the country, the Board of Investment (BOI) amended the conditions and incentives for Digital Industry and combined the related activities eligible for investment promotion under this industry. Our summary is as follows:

Activity	Condition	Corporate Income Tax (CIT) Exemption
Development of Software, Digital Service Platform, or Digital Content	<ol style="list-style-type: none"> <li>1. The minimum capital investment calculating from the expenses on salaries of Thai IT personnel as employed after submission of promotion application shall not be less than 1.5 million Baht per year</li> <li>2. Project must include processes in developing software, digital service platforms, or digital content specified by the BOI</li> <li>3. Use of existing or used machinery is permitted</li> <li>4. This activity excludes retail and wholesale of all types of products</li> <li>5. Revenue eligible for CIT must be derived from sales or provisions of services which directly relate to the development of software, digital service platforms, or digital content promoted and prescribed by the BOI</li> <li>6. The cap for CIT incentives in each year which is derived from the actual cost in the year in which such incentive is exercised shall be as follows:               <ul style="list-style-type: none"> <li>- For the expense on additional Thai IT personnel calculated from additional employment of Thai IT personnel compared with the employment of Thai IT personnel prior to the submission of promotion application, the cap for CIT exemption is <b>100%</b> of such expense</li> <li>- For the expense on trainings for developing the skills of Thai personnel relating to technology development, and the expense on human resources development under the cooperation projects involving educational institutions, such as, Work-integrated Learning (WiL), co-operative and dual</li> </ul> </li> </ol>	8 Years

	<p>vocational education, or cooperation for the development of Thai IT personnel as approved by the BOI, the cap for CIT exemption is <b>200%</b> of such expense</p> <p>Note: Such expense on human resources development is not eligible for CIT exemption if the applicant applies for the incentives under the investment promotion measures in the Eastern Economic Corridor (EEC)</p> <ul style="list-style-type: none"> <li>- For the expense for obtaining ISO 29110 or CMMI Level 2 or equivalent international standard certificate, the cap for CIT exemption is <b>100%</b> of such expense</li> </ul> <p>7. This activity is not eligible for Merit-based Incentives for Competitiveness Enhancement and investment promotion measure for Small and Medium-sized Enterprises (SMEs)</p> <p>8. To obtain the incentives under the investment promotion measures in the Eastern Economic Corridor (EEC) in cases of human resources development, the request shall be notified when submitting the promotion application. This request cannot be changed after the investment promotion is approved.</p>	
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**Amendment of Investment Promotion for Trade and Investment Support Office (TISO) and International Business Center (IBC)**

The conditions to receive the BOI investment promotion relating to Trade and Investment Support Office (TISO) and International Business Center (IBC) have been amended, and now include the scope of business giving loans to affiliated enterprises. Our summary is as follows:

Activity	Condition	Incentives
Trade and Investment Support Office (TISO)	<ol style="list-style-type: none"> <li>1. Annual sales and administrative expenses must be at least 10 million Baht</li> <li>2. Business plan and scope of business must be as follows:                             <ul style="list-style-type: none"> <li>2.1 Monitoring and/or providing services to affiliated companies or group of companies, including providing services or procuring or leasing out office or factory buildings to affiliated companies or groups of companies, and lending money to affiliated companies or groups of companies not under the scope of Treasury Center business and able to be</li> </ul> </li> </ol>	B2

	<p>conducted under the laws concerning exchange control, such as</p> <ul style="list-style-type: none"> <li>- Lending foreign currency to affiliated enterprises abroad</li> <li>- Lending Baht currency to affiliated enterprises in Thailand</li> <li>- Lending Baht currency to affiliated enterprises in Vietnam and Thailand's neighboring countries for trade and investment in such countries only</li> </ul> <p>2.2 Advisory services on business operations, except those engaged in buying and selling securities and foreign currency exchange. Accounting, legal, advertising, architecture, and civil engineering businesses must obtain business licenses from the Department of Business Development or related government agencies prior to submitting the investment promotion application</p> <p>2.3 Information services on goods procurement</p> <p>2.4 Engineering and technical services, except those related to architecture and civil engineering services</p> <p>2.5 Business activities related to machinery, engines, tools and equipment, such as:</p> <ul style="list-style-type: none"> <li>- Importing for wholesaling</li> <li>- Training services</li> <li>- Installation, maintenance and repair</li> <li>- Calibration</li> </ul> <p>2.6 Wholesaling products manufactured in Thailand</p> <p>2.7 International business process outsourcing whose services are provided through telecommunication networks, such as administrative services, finance &amp; accounting services, human resource services, sales &amp; marketing services, customer services, data processing, etc.</p> <p>3. In case of lending money to affiliated companies or groups of companies, the scope of business in providing other services to affiliated companies or groups of companies, apart from lending money in 2.1, at least one scope of business in 2.2- 2.7 must be involved</p>	
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	<p>4. This activity is not eligible for merit- based privileges</p>	
<p>International Business Center (IBC)</p>	<p>1. Business plans in providing services for associated enterprises must fall within the scope of the following:</p> <p>1.1 General business management, business planning, and business cooperation;</p> <p>1.2 Procurement of raw materials and parts;</p> <p>1.3 Research and development of products;</p> <p>1.4 Technical support</p> <p>1.5 Marketing and sales promotion</p> <p>1.6 Human resources management and training</p> <p>1.7 Financial advisory services</p> <p>1.8 Economic and investment analysis and research</p> <p>1.9 Credit management and control</p> <p>1.10 Financial management service of the Treasury Center</p> <p>1.11 International trade business</p> <p>1.12 Lending money to affiliated enterprises not under the scope of Treasury Center business in 1.10, and able to be conducted under the laws concerning exchange control, such as</p> <ul style="list-style-type: none"> <li>- Lending foreign currency to affiliated enterprises abroad</li> <li>- Lending Baht currency to affiliated enterprises in Thailand</li> <li>- Lending Baht currency to affiliated enterprises in Vietnam and Thailand's</li> </ul>	<p>B1 (Only for machinery used for Research and Development, and training activities)</p>

	<p>neighboring countries for trade and investment in such countries only</p> <p>1.13 Other supporting services stipulated by announcements of the Revenue Department</p> <p>2. Paid-up registered capital must not be less than 10 million Baht</p> <p>3. Employment of at least 10 permanent skilled and knowledgeable staff for the IBC is required, exceptions are made for cases when that business provides only financial management service of treasury center to its associated enterprises; in such cases at least 5 permanent skilled and knowledgeable employees must be employed</p> <p>4. In case of operating international trade business, at least one scope of business in 1.1-1.10 must be involved</p> <p>5. In case of lending money to affiliated enterprises, at least one scope of business in 1.1- 1.9 must be involved</p> <p>6. Not eligible for import duty exemption on raw or essential materials used in the production for export</p> <p>7. Not eligible for additional merit-based privileges</p>	
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#### Amendment of Merit-Based Incentives for Competitiveness Enhancement

Under the Notification of the Board of Investment No. 21/2564, the Merit-Based Incentives for Competitiveness Enhancement have been amended and summarized as follows:

Type of Eligible Investment / Expenditures	Additional Cap
(1) Research and Development (R&D) in technology and innovation, whether it is insourcing or outsourcing in Thailand, or joint R&D with oversea institutes	300 %
(2) Donations to technology and human resource development funds, educational institutes, specialized training centers, R&D institutes or	100 %

governmental agencies in Science and Technology field in Thailand, as approved by the Board	
(3) Providing trainings or on-the-job trainings for developing skills, technologies and innovations to students studying in Science and Technology, i.e., Work-integrated Learning (WiL), dual vocational education or co-operative education as approved by the Board	200%
(4) Intellectual property licensing fees for technology developed in Thailand	200 %
(5) Advanced technology training	200 %
(6) Development of local suppliers with at least 51% Thai shareholding in advanced technology training and technical assistance	200 %
(7) Product & packaging design, whether it is insourcing or outsourcing in Thailand, as approved by the Board	200 %

The additional corporate income tax (CIT) exemption will be granted in a different way based on investment or expenditure ratio as follows:

<b>Ratio of investment capital or expenditures incurred to revenue of the first 3 years combined</b>	<b>Additional CIT exemption period</b>
1% or ≥ 200 million Baht (Whichever lower)	1 year (Altogether not exceeding 8 years)
2% or ≥ 400 million Baht (Whichever lower)	2 years (Altogether not exceeding 8 years)
3% or ≥ 600 million Baht (Whichever lower)	3 years

	(Altogether not exceeding 8 years)
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Note: The project entitled to CIT exemption (A1 and A2) is also eligible for the additional CIT exemption under this Notification, however, altogether not exceeding 13 years.

For the investment or expenditures in R&D in technology and innovation only, whether it is insourcing or outsourcing in Thailand, or joint R&D with overseas institutes, projects will receive additional CIT exemptions without ceiling as follows:

<b>Ratio of investment capital or expenditures incurred to revenue of the first 3 years combined</b>	<b>Additional CIT exemption period</b>
1% or ≥ 200 million Baht (Whichever lower)	1 year (Altogether not exceeding 13 years)
2% or ≥ 400 million Baht (Whichever lower)	2 years (Altogether not exceeding 13 years)
3% or ≥ 600 million Baht (Whichever lower)	3 years (Altogether not exceeding 13 years)
4% or ≥ 800 million Baht (Whichever lower)	4 years (Altogether not exceeding 13 years)
5% or ≥ 1,000 million Baht (Whichever lower)	5 years (Altogether not exceeding 13 years)

Furthermore, under the Notification of the Board of Investment No. 22/2564, the Merit-Based Incentives for Competitiveness Enhancement for SMEs with the same eligible investment or expenditures as mentioned above except Clause (6) have also been amended and summarized as follows:

<b>Type of Eligible Investment / Expenditures</b>	<b>Additional Cap</b>
(1) Research and Development (R&D) in technology and innovation, whether it is insourcing or outsourcing in Thailand, or joint R&D with overseas institutes	300 %

(2) Donations to technology and human resource development funds, educational institutes, specialized training centers, R&D institutes or governmental agencies in Science and Technology field in Thailand, as approved by the Board	100 %
(3) Providing trainings or on-the-job trainings for developing skills, technologies and innovations to students studying in Science and Technology, i.e., Work-integrated Learning (WiL), dual vocational education or co-operative education as approved by the Board	200%
(4) Intellectual property licensing fees for technology developed in Thailand	200 %
(5) Advanced technology training	200 %
(6) Product & packaging design, whether it is insourcing or outsourcing in Thailand, as approved by the Board	200 %

The additional corporate income tax (CIT) exemption will be granted in a different way based on investment or expenditure ratio as follows:

<b>Ratio of investment capital or expenditures incurred to revenue of the first 3 years combined</b>	<b>Additional CIT exemption period</b>
0.5%	1 year (Altogether not exceed 8 years)
1%	2 years (Altogether not exceed 8 years)
1.5%	3 years (Altogether not exceed 8 years)

Note: The project entitled to CIT exemption (A1 and A2), is also eligible for the additional CIT exemption under this Notification, however, altogether not exceed 13 years.

For the investment or expenditures in R&D in technology and innovation only, whether it is insourcing or outsourcing in Thailand, or joint R&D with oversea institutes will receive additional CIT exemption without ceiling as follows:

<b>Ratio of investment capital or expenditures incurred to revenue of the first 3 years combined</b>	<b>Additional CIT exemption period</b>
0.5%	1 year (Altogether not exceed 13 years)
1%	2 years (Altogether not exceed 13 years)
1.5%	3 years (Altogether not exceed 13 years)
2%	4 years (Altogether not exceed 13 years)
2.5%	5 years (Altogether not exceed 13 years)

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