

ASEAN Today

Regional Legal & Business News

September 2021

ASEAN Economic Community News

ASEAN Trade in Goods Agreement

The 53rd ASEAN Economic Ministers Meeting was held earlier this month and economic ministers from the ASEAN Member States adopted revisions to several terms in the Operational Certification Procedures (OCP) in the first Protocol amending the ASEAN Trade in Goods Agreement (ATIGA) including Certificate of Origin (CO) Form D and its Overleaf Notes to incorporate agreed Rules of Origin (ROO) implementation issues without waiting for the General Review of the ATIGA to facilitate trade, especially during the COVID-19 pandemic. 98.6% of tariff lines in ATIGA have now been removed, but ASEAN says that the upgrade of ATIGA needs to help firms capitalize on its benefits by cutting compliance costs and increasing trade facilitation measures. To help cope with the pandemic, the addition of 107 kinds of farm produce and food into the list of necessities in ASEAN was also approved, raising the total to 257.

Global Minimum Tax Concerns

The Asean+3 Macroeconomic Research Office (AMRO) says that ASEAN economies must enhance their non-tax competitiveness in attracting foreign investment as a response to the global tax reforms aimed at fighting base erosion and profit shifting (BEPS). The Group of 20 (G20) and the Organization of Economic Cooperation and Development (OECD) released a statement on global tax reform in July 2021. It says that a multinational enterprise (MNE) may be taxed by a jurisdiction in which it generates revenue, even if it is incorporated elsewhere and proposed a global minimum tax rate of 15% for large MNEs. The AMRO says that changes on tax jurisdiction will be more beneficial to more populous countries and a global minimum tax might compromise the attractiveness of the ASEAN member states. Cambodia, Laos, Myanmar, and the Philippines are not participants of the inclusive framework while China, Japan, and South Korea are.

ASEAN-China Relations Anniversary

The 30th anniversary of the start of ASEAN-China economic and trade relations takes place this year and both sides have made important progress in cooperation in trade and investment. Trade volumes have jumped from US\$8 billion in 1991 to US\$685 billion in 2020, and ASEAN and China also became each other's largest trading partner in 2020 with cumulative investment reaching US\$300 billion. Among the ASEAN dialogue partners, China was first to join the Treaty of Amity and Cooperation in Southeast Asia and establish a strategic partnership with ASEAN. More than 200 pairs of sister cities have been formed, and personnel exchanges between ASEAN and China continue to grow and exceeded 65 million in 2019.

ASEAN-EU Free Trade Agreement

ASEAN announced that it was set to resume free trade agreement (FTA) talks with the European Union after negotiations were suspended in 2009. The EU Commission has agreed to a joint trade and investment program and both sides will start preparing for negotiations for an ASEAN-EU FTA and holding joint expert meetings on trade issues such as e-commerce, government procurement, and sustainable trade and development. After the breakdown of negotiations in 2009, the EU decided to pursue bilateral trade agreements with individual ASEAN member states. Six ASEAN countries began talks on bilateral FTAs, but only Singapore and Vietnam have ratified FTAs with the EU in effect.

Singapore News

New Internet Content Control Act

Singapore passed the Foreign Interference Countermeasures Act (FICA) that targets foreign influence campaigns and gives Singapore's government new powers over internet content. The government says FICA will help prevent foreign entities from interfering with local politics by shutting down hostile information campaigns and dealing with foreign interference that uses local proxies. The government will have the power to request internet platforms to block social media accounts, to block content from being shown in Singapore, to disable or limit functions that allows content to go viral, and to block specific acts from being downloaded in Singapore.

Critics say that FICA is giving the government more and more broad discretionary powers that can be used against citizens, critics, and opposition parties.

Indonesia Update

Risk Based Assessment Licensing System

Indonesia's Risk-Based Assessment OSS (RBA OSS) system was implemented on August 9, 2021. Under Law No. 11 of 2020 regarding Job Creation and its implementing regulation, Government Regulation No. 5 of 2021 regarding Risk-Based Licensing, business licensing in Indonesia has shifted from commitment based to risk based. Now, licensing for businesses will be determined based on the risk in carrying out their business activities. All companies will now have to apply for a Nomor Induk Berusaha (NIB) license. Low-risk companies will only need an NIB, but middle- to high-risk companies will also need to comply with self-assessment certificate standards, government mandated certificate standards, and obtain specific permits. The RBA OSS system is the online business licensing platform for the implementation of all risk-based licensing in Indonesia.

Laos Bulletin

Cryptocurrency Mining

As China continues to crack down on digital currency mining, Laos has approved the mining and trading of cryptocurrencies. Laos has now become the first ASEAN country to officially permit and participate in blockchain-based currencies. Cryptocurrency mining requires large amounts of electricity and Laos has a surplus of hydroelectric power. The Bank of Laos and the national power utility, Electricité du Laos, will work together to regulate the industry. Experts says that the move to digital currency mining and trading is a logical move due to Laos's power generation capacity and minimal internal demand for it, but also warn that it could also be highly abused.

Cambodia Watch

New Investment Law

Cambodia's National Assembly approved a draft Law on Investment this month that would help create a transparent legal framework for investment and make Cambodia more competitive and resilient to regional and global

crises. The new law will modernize and increase local production by offering incentives for new technology and value-added production processes, strengthen connectivity to regional and global supply chains, and attract foreign investors by protecting their legitimate rights and interests. If approved by the Senate, the draft law will replace the 1994 Law on Investment and its 2003 amendment.

Malaysia News

New Business Restrictions

Malaysia announced that it will put measures in place that will restrict the sale of shares in Bumiputera companies to only Bumiputeras. Bumiputera refers to any of the indigenous peoples of Malaysia. This has the potential to reduce the ability of Bumiputera shareholders to make capital gains on the sale of shares in their companies due to their inability to sell shares to non-Bumiputeras and foreign entities and hamper their ability to raise capital through equity sales due to the restricted market. Malaysia also announced that local freight forwarding firms will now be required to have 51% Bumiputera equity to renew their customs licenses from the end of 2022.

THAILAND LEGAL REVIEW

Immigration News

Extension of the State Emergency

The Thai Cabinet decided to officially extend the State Emergency Decree from September 30, 2021, until November 30, 2021. The extension was necessary because COVID-19 is still spreading in other countries worldwide and infections continue to rise. Certain countries are still in lockdown, and this impacts international travel.

60-day COVID visa extension scheme

The Immigration Bureau issued an Announcement extending the period of the 60-day COVID Visa Extension Scheme. Under the Announcement, a new 60-day COVID Visa Extension Scheme will subsequently be implemented that will continue to allow foreigners who are stranded in Thailand and unable to leave to be able to continue to remain in the country. This visa extension scheme was previously supposed to

end on September 27, 2021. Foreigners holding all types of visa categories shall be eligible to apply for 60-day COVID visa extensions until November 26, 2021, provided that they are qualified based on the requirements set by the Immigration Bureau.

Corporate Law News

Guideline on Fair Trade Practice regarding Credit Term for SMEs

The Trade Competition Commission issued the Notice on fair trade practice regarding the credit terms for sellers and service providers as Small and Medium Enterprises (SMEs) which will become effective on December 16, 2021. The summary is as follows:

(1) Definition of SMEs

- **Manufacturing**
 - Employment of no more than 200 employees, or
 - Annual revenue of no more than THB500 million
- **Service, wholesale, or retail**
 - Employment of no more than 100 employees, or
 - Annual revenue of no more than THB 300 million

(2) Fair trade practice on the credit term between business operators (Buyers) and SMEs (“Sellers”) shall be made as follows:

- **Period of Credit Term**
 - For trading, manufacturing and services, the credit term shall not exceed 45 days
 - For trading, manufacturing and services relating to agricultural products or processed agricultural products with uncomplicated production processes, the credit term shall not exceed 30 days

Note: The credit term may be stipulated differently from the period as mentioned above (for a longer period) by providing reasonable causes based on business, marketing, and economics

- The credit term will start from the completion date of the delivery of products, or of provision of services
- In case of consignment, the credit term will start from the date that the products are completely sold as agreed in quantity and rate

• **Payment**

- Buyers shall clearly indicate the process of payment in accordance with normal trade practices, and
- Sellers shall provide proof showing the number of employees, or proof of income, in order to confirm the status of being SMEs

(3) The following actions may be considered as unfair trade practices:

- Delay in payment of products or services which exceeds the credit term as prescribed without reasonable cause
- Change of credit term or other conditions under the agreement without reasonable cause or without giving advance notice of not less than 60 days
- Other unfair actions which may refer to a force by the Buyers, for instance, stipulation of special conditions relating to credit terms which may create an unnecessary burden on the party.

• **Calculation of Period**

Amendment of Activities Eligible for BOI Investment Promotion

On September 16, 2021, the Board of Investment (BOI) issued new Notifications amending activities to support and encourage certain investments by adding new incentives which may be different. The summary is as follows:

Semiconductor Industry

Activities	Condition	Corporate Income Tax Exemption
1. Manufacture of semiconductors and/or parts for semiconductors including products obtained in between manufacturing process or downstream products such as wafer grinding, sawed dice, wafer testing, IC testing, IC module, etc.	<ul style="list-style-type: none"> ➤ For integrated circuits (IC), the cost of refurbishment of existing machines shall be regarded as an investment and will be calculated for corporate income tax exemption, but the original cost of the machines shall not be eligible for tax exemption ➤ Capital Investment <ul style="list-style-type: none"> - Capital investment of machinery (including installment and testing fees) for manufacturing of at least 1.5 billion Baht - Capital investment of machinery (including installment and testing fees) for manufacturing of less than 1.5 billion Baht 	<p>8 Years</p> <p>5 years</p>
2. Manufacture of Flexible Printed Circuit Boards and/or Printed Circuit Boards and/or parts	<ul style="list-style-type: none"> ➤ The manufacturing processes must be approved by the Board 	
<ul style="list-style-type: none"> • Manufacture of Flexible Printed Circuit Boards and/or Multilayer Printed Circuit Boards and/or parts 	<ul style="list-style-type: none"> ➤ Capital investment of machinery (including installment and testing fees) for manufacturing of at least 1.5 billion Baht ➤ Capital investment of machinery (including installment and testing fees) for manufacturing of less than 1.5 billion Baht 	<p>8 Years</p> <p>5 Years</p>
<ul style="list-style-type: none"> • Manufacture of Printed Circuit Boards and/or parts 		-
3. Manufacture of Printed Circuit Board Assembly (PCBA) or downstream products from PCBA in the same project	<ul style="list-style-type: none"> ➤ The whole assembly line of PCBA must use the Surface Mount Technology in the same project 	
<ul style="list-style-type: none"> • Manufacture of Printed Circuit Board Assembly (PCBA) or 	<ul style="list-style-type: none"> ➤ Capital investment of machinery (including installment and testing fees) only used in manufacture of PCBA of at least 500 million Baht 	5 Years

downstream products from PCBA in the same project	➤ Capital investment of machinery (including installment and testing fees) only used in manufacture of PCBA of less than 500 million Baht	3 Years
4. Manufacture of Wafers (With advance technology and innovation)	➤ The manufacturing processes must be approved by the Board	10 Years (No cap)

Packaging Industry

Activities	Condition	Corporate Income Tax Exemption
<p>1. Manufacture of specialty polymers or specialty chemicals</p> <ul style="list-style-type: none"> • Manufacture of specialty polymers or specialty chemicals, including downstream products in the same project • Manufacture of specialty plastic compounds or specialty rubber compounds, including downstream products in the same project 	<ul style="list-style-type: none"> ➤ Product qualification must be certified by the agencies as approved by the Board, or received an approval of international standard from abroad ➤ Product qualification must be certified by the agencies as approved by the Board, or received an approval of international standard from abroad 	<p>8 Years</p> <p>5 Years</p>
2. Manufacture of plastic packages with special properties		
<p>2.1 Multilayer plastic packaging</p> <ul style="list-style-type: none"> • Multilayer plastic packaging with co-extrusion process • Multilayer plastic packaging with lamination, or 	<p>(1) Products produced through a co-extrusion process, must integrate not less than 3 layers of plastics</p> <p>(2) Products produced through a co-extrusion process with the integration of less than 3 layers of plastics should be of better or equal quality to the products produced/integrated from plastic of not less than 3 layers. Product qualification must be certified by the agencies as approved by the Board, or received an approval of international standard from abroad</p>	<p>5 Years</p> <p>3 Years</p>

<p>lamination together with co-extrusion process</p> <p>2.2 Manufacture of plastic packages with other special properties</p> <ul style="list-style-type: none"> • Plastic packages with other special properties • General plastic packages 	<ul style="list-style-type: none"> ➤ Products produced through a lamination, or lamination together with co-extrusion process, must integrate with 4 layers or more ➤ Product qualification must be certified by the agencies as approved by the Board, or received an approval of international standard from abroad <p>(1) Plastic forming process is required (2) Be a plastic package with specific application, such as it can be used with microwave (3) Not be a plastic package in the target group to be reduced or abolished according to Thailand's Roadmap on plastic waste management as prescribed by Ministry of Natural Resources and Environment</p>	<p>5 Years</p>
<p>3. Manufacture of recycled plastic granules, including downstream products in the same project</p> <ul style="list-style-type: none"> • Recycled plastic granules with a quality equal to new plastic granules, including downstream products in the same project • Recycled plastic granules, including downstream products in the same project 	<p>(1) A quality equal to new plastic granules shall be approved by the agencies as approved by the Board, or received an approval of international standard from abroad (2) Must use domestic plastic scraps as a raw material</p> <p>(1) Proportion of plastic scrap application must not less than 70% (2) Must use domestic plastic scraps as a raw material</p>	<p>8 Years</p> <p>3 Years</p>
<p>4. Manufacture of pulp or paper, including downstream products in the same project</p> <p>4.1 Hygienic pulp, including downstream products in the same project</p> <p>4.2 Special pulp, including downstream products in the same project</p>	<ul style="list-style-type: none"> ➤ Must be certified with ISO 14611 level 5 (Clean Room) or Federal Standard 209 E Class 100 or above or an equivalent international standard within two years from the full operation start-up date ➤ Must be certified with manufacturing standards such as US-FDA, GMP or Food 	<p>8 Years</p> <p>5 Years</p>

<p>4.3 Recycled pulp, including downstream products in the same project</p> <ul style="list-style-type: none"> • Recycled pulp, including downstream products in the same project with Research and Development process • Recycled pulp, including downstream products in the same project <p>4.4 Pulp with environmental-friendly quality, including downstream products in the same project</p>	<p>Grade, within two years from the full operation start-up date</p> <p>(1) Expense in Research and Development shall not less than 0.5% of total sale in the first 3 years, or not less than 100 million Baht</p> <p>(2) Manufacture of recycle pulp shall be made from domestic wastepaper only</p> <p>(3) In case of manufacture of downstream products in the same project, this must use recycled pulp produced by itself of not less than 80% (by weight)</p> <p>(1) Manufacture of recycle pulp shall be made from domestic wastepaper only</p> <p>(2) In case of manufacture of downstream products in the same project, this must use recycled pulp produced by itself of not less than 80% (by weight)</p> <p>➤ In case of manufacture of downstream products in the same project, this must use recycled pulp produced by itself of not less than 80% (by weight)</p> <p>Products shall have either of the following qualification:</p> <p>(1) Must be certified with relevant international standards to environment friendly such as Forest Stewardship Council (FSC), Sustainable Forestry Initiative (SFI), and Carbon Footprint Reduction prior to the full operation start-up date</p> <p>(2) Must be rewarded in innovation relating to environment friendly by the agencies as approved by the Board</p>	<p>8 Years</p> <p>5 Years</p> <p>3 Years</p> <p>8 Years</p>
<p>5. Manufacture of product made from recycled pulp</p> <p>5.1 Product made from hygienic pulp or paper</p> <p>5.2 Paper container coated with bio-plastics</p> <p>5.3 High performance paper and/or paper container</p>	<p>➤ Must be certified with ISO 14611 level 5 (Clean Room) or Federal Standard 209 E Class 100 or above or an equivalent international standard within two years from the full operation start-up date</p> <p>➤ The production process must contain product coating process using biodegradable plastic</p> <p>➤ Must have an engineering design process such as special load-bearing capacity or shockproof capacity, etc., to obtain high performance paper and/or paper container</p>	<p>5 Years</p> <p>3 Years</p> <p>5 Years</p>

<p>5.4 Product made from recycled pulp or paper</p> <p>5.4 Product made from recycled pulp or paper, with environmental- friendly quality</p>	<p>Product qualification must be certified by the agencies as approved by the Board, or received an approval of international standard from abroad</p> <p>(1) Production of paper must use recycled pulp not less than 80% (by weight) in the manufacturing process</p> <p>(2) Must have forming process in the project for manufacturing of products made from recycled paper</p> <p>(1) Must use environmental-friendly raw materials in the production of paper</p> <p>(2) Must have forming process in the project for manufacturing of products made from paper with environmental-friendly quality</p>	<p>3 Years</p> <p>3 Years</p>
<p>6. Manufacture of intelligent packaging and/or parts</p> <p>6.1 Intelligent packaging and/or parts in Active Packaging group</p> <p>6.2 Intelligent packaging and/or parts in Active Packaging group</p> <p>6.3 Intelligent packaging and/or parts from the substances resulting in intelligent qualification</p>	<p>(1) Must have qualifications which lead to interactions between packaging and product to be contained and/or external environment, in order to extend expiration date and/or remain quality or qualification of product contained in the packaging</p> <p>(2) Must have manufacturing process of substance having qualifications as mentioned in (1), such as antibacterial substances or Oxygen scavenger, etc.</p> <p>(3) For manufacture of Intelligent packaging, forming process of packaging is required in the project</p> <p>(4) Product qualification must be certified by the agencies as approved by the Board, or have received an approval of international standard from abroad</p> <p>(1) Must have qualifications indicating quality of product or caution on troubles which may occur by showing the result or communicate to the user (excluding RFID)</p> <p>(2) Must have manufacturing process of substance having qualifications as mentioned in (1), such as special ink or substance in which the color may change upon temperature and time, etc.</p> <p>(3) For manufacture of Intelligent packaging, forming process of packaging is required in the project</p> <p>(4) Product qualification must be certified by the agencies as approved by the Board, or received an approval of international standard from abroad</p>	<p>8 Years</p> <p>8 Years</p> <p>3 Years</p>

	<ul style="list-style-type: none"> ➤ Must have a forming process of intelligent packaging and/or part in the project 	
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