



# NISHIMURA & ASAHI

First Quarter 2022 (Jan. - Mar.)



## ASIAN LEGAL UPDATE



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## 1. Partnership Requirement

Following Presidential Decree No. 10 of 2021 on Investment Sectors (“**Presidential Decree 10**”), the Indonesian Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* – “**BKPM**”) issued a regulation (effective 11 February 2022) strengthening the requirement for certain large scale businesses set in Presidential Decree 10 (including Indonesian limited liability companies with foreign investment status, known as “**PMA companies**”) to partner with micro, small, and medium enterprises (MSMEs).

In the BKPM regulation, matters that were previously less clear or lacking details have been clarified, such as:

- a) PMA companies that are required to partner with MSMEs must first submit a letter stating their intention to commit to such a partnership (‘commitment letter’), which must include three items: type of work, estimated value of the work, and implementation time of the partnership. The requirement to submit the commitment letter applies to (i) new PMA companies, (ii) existing companies applying investment facilities from the government, and (iii) existing companies expanding their business (by adding: business sector(s), production capacity, or locations).
- b) There are certain models that can be used for the parties’ partnership, including operational cooperation and outsourcing. For outsourcing, the regulation made it clear that the type of work that can be outsourced is limited to non-core works / activities of the PMA company.
- c) At the implementation stage, the partnership must be based on a business partnership agreement signed by the PMA company and the MSMEs – which agreement must contain certain provisions, including period of partnership, payment method and payment terms, as well as dispute resolution.
- d) The partnership must be carried out in a sustainable manner so long as the PMA company still conducts its business activities.

## 2. New Capital City of Indonesia

Law No. 3 of 2022 on Capital City of the State reaffirms the relocation of the capital city of Indonesia from DKI Jakarta to Kalimantan. Here are some notable points with respect to the law.

Development of Nusantara, the name of the new capital city of Indonesia, will be led by a special authority with the power to, among others, issue investment licensing and provide facilities to parties supporting financing for the purposes of preparation and relocation of the capital city. The special authority of Nusantara will start operating no later than the end of 2022.

The relocation of government offices to Nusantara will be done in stages and the President will issue a presidential decree to further regulate this matter, including the official date of the relocation. Until then the position, function, and role of the State capital remain unchanged.

Nusantara is also designated as the default location for representatives of foreign countries and international organizations/institutions, for which purpose the government will prepare land (based on the reciprocity principle) and other non-material incentives to increase the willingness of such representatives to relocate. The government envisages that the representatives of foreign countries and the representatives of international organizations will move to Nusantara within ten years of the relocation of the capital city.

## 1. Updated COVID-19 Measures

In view of the stabilisation of Singapore’s local COVID-19 situation and having passed the peak of the Omicron wave, the government has introduced updated Safe Management Measures (SMM) and relaxed border measures to facilitate the resumption of travel.

From 29 March 2022, the following changes to general work-related measures will take effect: (a) up to 75% of employees who are able to work from home can be at the workplace at any point in time; (b) food and beverages can be served at all work-related events, including those with more than 50 attendees, and event organisers need not notify the authorities about the event; (c) social gatherings at the workplace will be permitted in groups of up to 10 (with a one (1) metre safe distance between each group unless all members of the group are wearing masks); (d) mask-wearing will continue to be required for indoor settings but will be optional in outdoor settings; and (e) the Rostered Routine Testing (RRT) regime will cease for workers in all sectors, including unvaccinated or partially vaccinated workers residing in dormitories, in view of the high vaccination and booster coverage among the migrant worker population. In relation to employees who test positive for COVID-19, employees who are physically well should be allowed to work from home if they are able to do so. If working from home is not possible, employers should treat the period of absence as paid sick leave (either paid outpatient sick leave or paid hospitalisation leave) without requiring a medical certificate. From 1 February 2022, vaccination against COVID-19 will be a condition for the approval or grant of new work passes and will be required for the renewal of existing work passes.

From 31 March 2022, all fully vaccinated travellers can enter Singapore quarantine-free under the Vaccinated Travel Framework. Eligible groups of travellers arriving via air or sea channels are subject to a pre-departure test within two (2) days before departure for Singapore but are not subject to on-arrival tests or Stay-Home Notice (SHN).

## 2. Changes to Employment Pass (“EP”) eligibility

The Ministry of Manpower will be raising the qualifying salary from S\$4,500 to S\$5,000 (all sectors except financial services) and S\$5,500 (for financial services) for new EP applications from 1 September 2022, and for EP renewals from 1 September 2023. In addition to meeting the qualifying salary, EP candidates must pass a points-based Complementarity Assessment Framework (“COMPASS”) for new EP applications from 1 September 2023 and for EP renewals from 1 September 2024. COMPASS evaluates EP applications based on a holistic set of (a) individual attributes (i.e. salary, qualifications, being on the Shortage Occupation List (SOL)) and (b) firm-related attributes (i.e. diversity, support for local employment, meeting specific assessment criteria on innovation, or internationalisation activities).

## 3. Amendments to the Central Provident Fund Act 1953

Amendments pursuant to the Central Provident Fund (Amendment) Act 2021 and the Central Provident Fund Act (Amendment of First Schedule) Notification 2021 include, amongst others: increase in CPF contribution rates by 2% for employees between 55 and 70 from 1 January 2022, simplifying tax relief rules, higher tax relief of up to S\$8,000 per year for cash top-ups, retirement sum scheme automatic transfers, ease of receiving and higher retirement payouts and automatic and flexibility in transfers to retirement accounts.

## 1. SME-PO and Live Exchange

The Notification of the Capital Market Supervisory Board No. TorJor. 71/2564 and the Notification of the Capital Market Supervisory Board No. 75/2564 were announced and came into force on 16 January 2022 to provide SME and startups a channel to raise funds through public offering. Under these regulations, SME or startups may raise funds through public offering via the newly-established “Live Exchange” provided that such SME or startup hold the necessary qualifications, such as being a public limited company under Thai law (with no requirement on minimum paid-up registered capital) and not being an investment company. In addition, the offering may only be made to certain prescribed investors such as a financial institution, venture capital firm or other experienced investors, and the net offering value must be in the range of Baht 10 - 500 million. If these conditions are met, approval of the offering is deemed to have been granted without requiring the issuer to apply for such approval and no financial advisor is required in the offering. Overall, these conditions for SME and startup public offerings in the Live Exchange are more relaxed compared to those conducted via the Stock Exchange of Thailand (SET) or Market for Alternative Investment (MAI).

## 2. SEC Amends Definition of Institutional Investor, Ultra High Net Worth Investor, and High Net Worth Investor

The Notification of the Securities and Exchange Commission No. Kor Chor 39/2564 was published in the Government Gazette on 26 February 2022 and shall enter into force on 1 October 2022. Under this Notification, the SEC has widened the scope of “institutional investor” to include investors who have the ability to analyze and take risks in complex or very high-risk products, such as investment analysts, venture capital firms, private equity firms, angel investors and persons familiar with the investment business (e.g. directors, executives, employees and major shareholders of a business), among others. In respect of Ultra High Net Worth Investors (“UHNWIs”), and High Net Worth Investors (“HNWIs”), the SEC has relaxed the financial qualifications (e.g. for UHNWIs, net assets of not less than Baht 60 million or annual income of not less than Baht 6 million and for HNWIs, net assets of not less than Baht 30 million or annual income of not less than Baht 3 million) while adding additional principles in considering the qualifications of investors' knowledge or experience (e.g. possessing the prescribed professional license or financial certificate such as Chartered Financial Analyst, Certified Investment and Securities Analyst, Chartered Alternative Investment Analyst and Certified Financial Planner).

## 3. SEC issues Regulation Prohibiting Digital Asset Business Operators From Facilitating the Use of Digital Assets as a Means of Payment

The Notification of the Securities and Exchange Commission No. Kor Thor 5/2565 was published in the Government Gazette on 30 March 2022 and entered into force on 1 April 2022. Under this Notification, digital asset business operators of all types are prohibited from providing services or acting in any manner which supports or promotes the use of digital assets as a means of payment for goods and services, including advertising, soliciting or presenting oneself as ready to provide payment services to shops or establishing a system or a tool for facilitating payment of goods and services, or opening a digital wallet for the purpose of using digital assets as a means of payment for goods and services, among others.

## 4. Amendment to the Copyright Act

The Copyright Act (No. 5) B.E. 2565 (2022) (the “Act”) was announced in the Government Gazette on 24 February 2022 and will come into effect on 23 August 2022. Three significant changes are made under this Act: (1) the exemption from liabilities of the service provider - this Act provides more detailed specifications on how the service providers (i.e. intermediary, hosting, caching of computer or search engine data) may be exempted from copyright infringement liabilities due to their provision of services; (2) the notice and takedown system - this Act requires the service providers who provide hosting or search engine services to take down or suspend the data without delay after receiving a notice of infringement from the copyright owner, as opposed to a court order under the former law; and (3) the provisions relating to technological protection measures - this Act broadens the provisions relating to violation on technological protection measures to encompass any act rendering access-control technological protection measures ineffective, regardless of whether there are intentions to infringe or not, among others.

## 1. Law Amending and Supplementing a Number of Laws (the “Law”)

This Law was promulgated on 11 January 2022 and entered into effect on 1 March 2022 to amend, among others, the following laws with the following notable conditions:

- (i) For the Law on Investment, the provincial authority is now officially empowered to grant investment in-principle approval (“IPA”) to, amongst others, (a) investment projects for construction of residential housing or urban zones using under 300 hectares of land and having a population scale under 50,000 people; and (b) investment projects located in areas within the scope of protection zone II of certain national relics and special national relics. In addition, “trading in cybersecurity products and services (except for trading in cyber information security products and services and civil cryptography products and services)” was added to the list of conditional business lines.
- (ii) For the Law on Enterprises, the method for calculating the ratio of 65% or 50%, as the case may be, for ratification of resolutions of the General Meeting of Shareholders is changed. The total number of votes of shareholders participating and voting in the meeting shall be counted, rather than the total number of votes of shareholders simply participating in the meeting as provided by the old provision.
- (iii) Law on Investment in the Form of Public-Private Partnership, the authority to grant IPA of a public - private partnership investment project funded by Official Development Assistance (ODA) loans and preferential loans from foreign sponsors has been partly transferred from the Prime Minister to lower-level authorities. Specifically, only those projects with a total investment level equivalent to that of “Group A” projects require the approval of the Prime Minister. In-principle approvals of the remaining projects now are granted by lower-level authorities (e.g., ministers, and provincial People’s Councils).
- (iv) For the Law on Electricity, the Law newly allows investors of non-state economic sectors to operate transmission grids that they have invested in and built themselves.

## 2. Resolution 17/2022/UBTVQH15 on Increasing Overtime Caps (“Resolution 17”)

The caps on overtime hours (“OT”) in a year and a month of employees are loosened under Resolution 17 of the Standing Committee of the National Assembly on 23 March 2022 in the context of Covid-19 pandemic. In particular, in addition to the cases that are eligible for the cap of 300 hours under Article 107.3 of the Labor Code, employers of all business sectors, upon their demand and subject to the consent of employees, are allowed to mobilize employees to work OT of more than 200 hours but not exceeding 300 hours in a year, except for some specific cases where the cap of 200 hours/year is still applicable (such as junior employees, disable employees and female employees who are pregnant). These employers are also allowed to mobilize the employees to work up to 60 hours a month. The new annual cap and the monthly cap will be effective from 01 January 2022 and 01 April 2022, respectively.

## 3. Decree 02/2022/ND-CP on Guidance for the Implementation of Certain Articles of the Law on Real Estate Business (“Decree 02”)

Decree 02/2022/ND-CP, which was issued recently and came into effect on 01 March 2022, shall completely replace Decree 76/2015/ND-CP (“Decree 76”) with the following notable points:

- (i) A real estate business company is newly required to publicize and update from time to time, statutory information on its website, at the head office of the project management board and/or trading floor, such as information related to the company, traded real estate, and relevant mortgage.
- (ii) While Decree 76 provided some contract templates applicable to real estate business activities for reference only, Decree 02 provides eight contract templates that are mandatorily applicable to the relevant types of real estate business transactions.
- (iii) The transferor of a real estate project is now required to resolve all complaints of customers and other relevant parties after project transfer contract execution and before handing over the transferred project to the transferee, rather than being required to resolve all such complaints before executing a project transfer contract under Decree 76.

## 1. Small Target Exemption for merger filing requirement extended

Under the Competition Act, 2002 (“**Competition Act**”), acquisitions, mergers and amalgamations (together, “**Combinations**”) above a specified threshold are required to be notified to the Competition Commission of India (“**CCI**”) for prior approval. However, the Government of India issued a notification dated 16 March 2017 (“**2017 Notification**”) which provided an exemption to this advance notification requirement in cases where the target falls within the thresholds set out below:

- (i) The value of the assets of the target (including its divisions, units and subsidiaries) being acquired, merged, taken over, or amalgamated is not in excess of INR 3.5 billion in India; or
- (ii) The turnover of the target (including its divisions, units and subsidiaries) does not exceed INR 10 billion in India.

The exemption was due to expire in March 2022, but now has been extended by an additional 5-year period, until 29 March 2027.

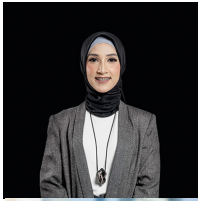
Additionally, on 31 March 2022, the CCI substituted the existing Form II (the long form required to be filed for transactions where the parties have more than a 15% market share in horizontally overlapping markets or more than a 25% market share in a vertically related market) with an updated and shorter form, by removing duplications and limiting the information that must be submitted. The CCI is expected to issue guidance notes in due course, for further clarity.

## 2. FDI Policy amended to permit Foreign Investment in Life Insurance Corporation of India (“LIC”), and to ease the funding options for Start-ups

The Department for Promotion of Industry and Internal Trade of the Government of India (“**DPIIT**”) issued Press Note No. 1 of 2022, dated 14 March 2022 (“**PN 1**”), to amend the Consolidated FDI Circular of 2020 (as amended) (“**FDI Policy**”) in the following key aspects:

- (i) **LIC**: Foreign investors are now permitted to invest in up to 20% of the share capital of LIC (India’s largest life insurance company), without having to obtain prior government approval, subject to certain conditions introduced in PN 1. LIC currently is owned by the central government of India, but is expected to proceed for India’s largest initial public offering in the next couple of months. Prior to PN 1, foreign investment in LIC was prohibited.
- (ii) **Start-ups**: Per the FDI Policy, and pursuant to the Companies Act of 2013, start-ups were permitted to issue convertible notes to non-residents on the condition that the notes would be converted into equity shares within a maximum of 5 years from the date of issuance. This time limit has been relaxed by PN 1, and is now 10 years.
- (iii) **Real Estate Business**: The FDI Policy prohibits foreign investment in ‘real estate business’ and only provides a negative list of activities which are excluded from the definition of real estate business. Now a precise definition has been provided under PN 1 which, in addition to such exclusions provided under the FDI Policy, also specifically excludes real estate investment trusts (REITs) registered under the SEBI (REIT) Regulations 2014.

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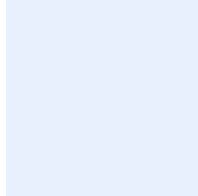
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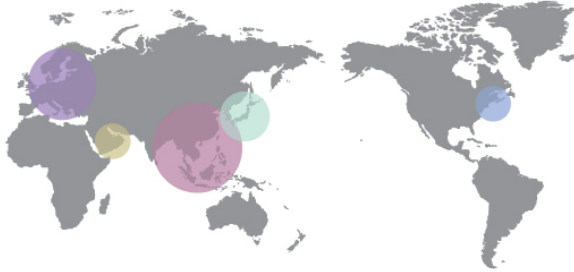
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