



NISHIMURA & ASAHI



SOUTHEAST ASIAN LEGAL UPDATE

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The below are summary of implementing regulations of the Omnibus Law, as well as notable regulatory update with respect to capital markets issued in this quarter.

1. Relaxation of Foreign Ownership Restrictions

A number of sectors have been removed from the previously 'closed sectors' category which demonstrates the commitment of the Government of Indonesia to welcoming foreign investment. Other business sectors - which were previously only open for minimum foreign ownership - now have significantly increased foreign ownership levels. That said, certain sectors remain closed to foreign ownership or can only be conducted if meeting certain conditions, such as, partnerships with SMEs.

2. Employment Law Reform: Balancing the Two Interests

As a jurisdiction that is well-known for its 'pro-employees' policy, the recent employment regulations aim at creating more balance in the employer-employee relationship. This is particularly important given the impact of the Covid-19 pandemic to existing businesses in the country and to Indonesia in general whose economy is still largely dependent on labor-intensive industries. Main areas that are affected by the recent regulations include:

- overtime and salary,
- outsourcing arrangements,
- fixed-term contract employees,
- termination of employment relationships and compensation, and
- foreign worker hiring.

3. Land Titles

In February 2021, the Government of Indonesia issued a regulation to implement certain relaxations introduced by the Omnibus Law in relation to land related titles. Such relaxations include:

- allowing foreigners to own strata-title units built on certain types of land located in certain areas, and
- allowing certain types of land rights to be granted for longer terms at once in advance which would in effect significantly increase the bankability of the land in question.

4. Licensing Reform

The Indonesia business licensing system has now shifted to a risk-based approach with the main objective being to simplify the processes. This means that low-risk business activities shall only require a simple registration whereas business activities that pose higher potential risk, among others things, to human health and the environment, must apply for certain licenses and are subject to a more stringent supervision.

5. Capital Market: Listed Company Going Private

A notable update recently introduced by the Indonesia Financial Services Authority (*Otoritas Jasa Keuangan* - OJK) is in relation to listed companies going private. In its recent regulation, OJK opened the possibility for mandatory order to go private based on OJK's instructions at the request of the Indonesia Stock Exchange. In the same regulation, OJK also set out detailed requirements and procedures for companies to go private.

1. Amendments to Personal Data Protection Act 2012 (No. 26 of 2012) (“PDPA”)

Amendments to the PDPA pursuant to the Personal Data Protection (Amendment) Act 2020 (No. 40 of 2020) came into force on 1 February 2021. A summary of the key amendments are listed below:

- Expanded Deemed Consent Framework – Under the PDPA, it is a general requirement prior to an organisation collecting, using or disclosing the personal data of an individual that the organisation must obtain or be deemed to have obtained the consent of such individual to do so. Two (2) new provisions have been added to the deemed consent framework, being “deemed consent by contractual necessity” and “deemed consent by notification”.
- Exceptions to the Consent Requirement – Two (2) new exceptions to the requirement to obtain consent have been introduced. The “legitimate interests exception” permits organisations to collect, use or disclose personal data without the consent of the relevant individuals where there is a need to protect legitimate interests. The “business improvement exception” permits organisations to collect, use or disclose personal data without the consent of the relevant individuals for certain specified purposes.
- Mandatory Data Breach Notification Requirement – A new data breach notification requirement has been introduced which provides that in the event of a personal data breach that results in, or is likely to result in significant harm to affected individuals or is of a significant scale, organisations are required to notify the Personal Data Protection Commission as soon as possible, and within no later than three (3) calendar days once the data breach is assessed to be notifiable.
- New Offences for Mishandling of Personal Data – New offences have been introduced that target actions by individuals in relation to the egregious mishandling of personal data in the possession of or under the control of an organisation.

2. Goods and Services Tax Act (Cap. 117A of Singapore) (“GST Act”)

Amendments to the GST Act pursuant to the Goods and Services Tax (Amendment) Act 2020 came into force on 1 January 2021. These include introducing measures to counter missing trader fraud that would disentitle a person from claiming credit for input tax on a supply made to the taxable person if such person knew or should have known that the supply is part of missing trader fraud.

3. Electronic Transactions Act (Cap. 88 of Singapore) (“ETA”)

Amendments to the ETA pursuant to the Electronic Transactions (Amendment) Act 2021 came into force on 19 March 2021, primarily to adopt the UNCITRAL Model Law on Electronic Transferable Records.

The key update to the ETA is that the new concept of Electronic Transferable Records (“**ETR**”) has been introduced whereby the legal enforceability of electronic records (i.e. to satisfy any requirement for information to be in writing) and electronic signatures (i.e. to be recognised as the equivalent of a wet-ink signature) will apply to transferrable instruments, such as documents of title, bills of exchange, consignment notes, bills of lading and promissory notes, when in the form of an ETR, subject to meeting certain requirements.

1. New Regulation to Legalize Hemp-Related Business

The Ministerial Regulation re: Licensing and Approval for the Production, Import, Export, Distribution or Possession of Narcotics in Category 5 Specifically for Hemp B.E. 2563 (2020), which came into effect on 29 January 2021, allows the production, import, export, distribution and possession of hemp (i.e. *Cannabis sativa L. subsp. Sativa*) for, among other activities, commercial, industrial, medical purposes and research purposes.

The applicant of a license to operate a hemp-related business needs to be a Thai individual domiciled in Thailand, a juristic person incorporated under Thai laws (with at least two-thirds of the directors, partners or shareholders being of Thai nationality, and the representative being domiciled in Thailand), a community enterprise, or a designated government agency.

2. Reduction of Land and Building Tax

To relieve the impact of the COVID-19 pandemic on people's financial situations and quality of life, the Royal Decree on Reduction of Taxes for Certain Types of Land and Building (No. 2) B.E. 2564 (2021) was enacted and came into force from 1 February 2021. By virtue of this Royal Decree, taxes for the year 2021 for the land and building used for, among other activities, residential purposes, agricultural purposes and vacant or unused land or buildings will be reduced by 90 percent.

3. Food Advertising

To stay current with the various channels and methods of advertising in modern times, the Thai Food and Drug Administration issued a new Notification on Criteria for Food Advertising B.E. 2564 (2021), which came into effect on 31 March 2021.

This Notification prescribes the characteristics of advertisements and advertising statements for certain types of food products which require approval from the authority prior to publication. In addition, some advertising statements are strictly prohibited; for example, that food products are able to "prevent Coronavirus", "cure infectious diseases" or "reduce cholesterol, blood pressure, lipid levels or blood sugar levels".

4. Extension of State Emergency

By virtue of Section 5 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005), the Prime Minister with the approval of the Cabinet, announced an extension of the period to enforce the Declaration of an Emergency Situation in all areas throughout Thailand until 31 May 2021.

Under the Declaration of Emergency Situation, the Prime Minister has the authority to, among other things, prohibit the assembly or gathering of people as well as impose certain restrictions on the operations of any businesses; for example, dine-in services after 9.00 p.m. may not be permitted.

1. Guidance on Investment Law 2020

Decree No. 31/2021/ND-CP, which took effect on 26 March 2021, has been introduced to provide guidance on the following content, amongst other content, of the Investment Law 2020:

- Investment business lines, including a list of business lines which foreign investors, including foreign-invested companies which are deemed to be foreign investors, are not allowed to invest in and a list of business lines which foreign investors must satisfy market entry conditions to invest in, together with relevant applicable principles;
- Investment incentives and support;
- Implementation of investment projects, including project performance insurance of the investors, investment project approval, registration and amendment related procedures; and
- Establishment and investment project implementation of foreign-invested enterprises.

2. Guidance of the Law on Public – Private Partnership (PPP) Investment 2020

Decree 35/2021/ND-CP, which took effect on 29 March 2021, has been introduced to provide guidance on the following content, amongst other content, of the Law on PPP Investment 2020:

- Sectors and minimum investment capital applicable to PPP projects in each sector;
- Assessment of PPP projects;
- Preparation of PPP projects; and
- Completion confirmation, transfer of the construction works, infrastructure system, and termination of PPP agreements.

3. Criteria for being hi-tech enterprises

Decision 10/2021/QĐ-TTg, which will come into effect on 30 April 2021, sets out criteria for an enterprise to be recognized as a hi-tech enterprise which consequently will be entitled to certain investment incentives decided by the Government.

- The ratio of total expenses for research and development activities to the total net revenue less input value must reach 0.5% for enterprises having total funding sources from VND 6,000 billion and from 3,000 workers (Enterprises of X type), 1% for enterprises other than X type having total funding sources from VND 100 billion and from 200 workers (Enterprises of Y type), and 2% for other enterprises.
- The ratio of workers directly participating in research and development having at least a college-level education to the total number of workers must reach 1% for Enterprises of X type, 2.5% for Enterprises of Y type, and 5% for other enterprises.
- Expenses for research and development of enterprises have been further clarified.

4. Draft guidance governing personal data protection

The Ministry of Public Security of Vietnam has recently published the second version of the draft decree on personal data protection for public opinion, which sets out various principles and provisions to protect the rights of data subjects and regulate activities of the data processor with very strict requirements.

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