Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:
Q1/2019

Latest news on law,
tax and business in ASEAN

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Read in this issue:

→ Note from the editor

Dear reader,

Left to right: Dr. Thilo Ketterer (Rödl & Partner China|Stuttgart), Thomas Bauer (Lufthansa), Sunil Kaul (Leica Camera Asia Pacific), Franz-Josef Kleideitert (Kienbaum Singapore), Markus Waechter (TUM Asia Pte Ltd)

Welcome to the Q1/2019 edition of our ASEAN Newsflash. The first quarter of the year has so far seen some interesting political developments in the region, such as the ongoing election campaigns in Indonesia and Thailand as well as the approval of the EU-Singapore Free Trade Agreement by the EU parliament on 13 February; the entry-into-force of the pact is now expected within 2019. Moreover, we continue to monitor the progress on the EU-Indonesia FTA with the seventh round of negotiations scheduled in Brussels this month. Finally we want to sincerely thank all guests of our 2nd ASEAN Forum on 24 January in Singapore, who made the event a remarkable success with many interesting discussions and eye-level-exchange on cross-border business issues. To keep the ball rolling, more international matters will be discussed at our firm's Forum Going Global which will be held in Nuremberg, Germany, on 16 May 2019. We will be happy to meet you personally and talk about your worldwide trade and investment activities. If you are interested in the program or would like to join the event, please refer to the following link: https://www.roedl.de/forumgoingglobal.

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→ Indonesia

New Bonded Zone Provisions in Indonesia

In late 2018, the Minister of Finance issued Regulation No. 131/PMK.04/2018 on Bonded Zone Provisions (Regulation 131), shifting the authority to issue bonded zone licenses from the Directorate General to the Head of Regional Customs Office. The Bonded Zone facility is mainly provided to manufacturing companies with export focus, fostering import substitution or supporting downstream industries. Manufactured goods may be sold domestically up to a maximum of 50 per cent of the previous year's export realization value or sales value to other special zones.

REFERENCE TO OSS SYSTEM

The new regulation, which entered into force on 25 November 2018, refers to the newly implemented online single submission (OSS) licensing system and provides that companies wishing to apply for a bonded zone license must be registered in OSS and have a Business Identification Number (Nomor Induk Berusaha – NIB, please refer to our Newsflash Q4/2018 for further details concerning NIB issuance).

The respective application needs to be submitted through the Indonesia National Single Window which has been integrated in the OSS system. These simplified proceedings shall expedite the registration process. Once issued, all licenses remain valid as long as the main bonded zone status is not revoked. In addition, a taxpayer confirmation is now required to obtain the bonded zone license.

MORE DETAILED SPECIFICATIONS

Regulation 131 now also accommodates special economic zones and other bonded stockpiling areas. Furthermore, the types of incoming and outgoing goods are specified more clearly than under the previous regime, covering a broader range and including packaging or auxiliary materials.

REPORTING OBLIGATIONS

Companies now have broader reporting obligations and are required to submit a report on operations' economic effect and financial specifics. A company can be blacklisted for the Bonded Zone license if it has (i) a criminal history in customs, (ii) been declared bankrupt or (iii) debt arrears in the fields of customs, excise and tax. As a facilitation in practice, the bonded zone operation is no longer required to update its license if there are changes in address and tax ID number, which created some unnecessary administrative burdens in the past.

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→ Indonesia

New Provisions on the Instalments of Income Tax Article 25

The Minister of Finance ("MoF") issued the Regulation No. 215/PMK.03/2018 ("PMK 215") regarding the calculation of Article 25 instalments for new taxpayers, banks, state-owned enterprises, publicly-listed enterprises, other certain taxpayers who are required to prepare periodic financial statements, and individual taxpayers considered as certain entrepreneurs.

PMK 215 has been effective since 31 December 2018. In general, the issuance of PMK 215 revokes the previous regulation of PMK 255/PMK.03/2008 as last amended by MoF Regulation No. 208/PMK.03/2009. PMK 215 stipulates the calculation of Article 25 instalments for the above mentioned certain taxpayers. Below please find the summary:

<table>
<tr><th>NO</th><th>TAXPAYER</th><th>BASIS OF CALCULATION</th><th>NET INCOME</th><th>ART. 25 CALCULATION</th></tr>
<tr><td>a</td><td>Banks</td><td>Financial statements reported to Financial Service Authority (Otoritas Jasa Keuangan/OJK), consisting of statement of financial position and income statement from the beginning of fiscal year (“FY”) until the reporting period.</td><td rowspan="2">Excluding income from overseas and income subject to final taxes/not classified as tax object.

Should taxpayer suffer losses, these may be compensated within the period.</td><td>Art. 17 applied to net income and deducted by Art. 22 and Art. 25 that should have been paid from the beginning FY up to the period before reporting period.</td></tr>
<tr><td>b</td><td>Publicly-listed enterprises, except point (a), and taxpayers with periodic financial statements, including insurance companies, pension funds, financing companies, other financial institutions</td><td>Financial statements reported quarterly to OJK or Indonesian Stock Exchange, consisting of statement of financial position and income statement from the beginning of FY until the reporting period.

The instalment of Art. 25 is for 3 (three) months since the reporting period.</td><td>Art. 17 applied to net income and deducted by Art. 22 and 23 from the beginning FY until the reporting period, and Art. 25 that should have been paid from beginning FY until the reporting period.</td></tr>
<tr><td>c</td><td>State-owned enterprises, except point (a) and (b)</td><td>Work Plan and Revenue Budget (Rencana Kerja dan Anggaran Pendapatan/RKAP) for the current FY that has been approved in general shareholders’ meeting.

RKAP must be submitted to the tax office prior to the first Art. 25 payment deadline.</td><td>Refer to RKAP.</td><td>Art. 17 applied to net income and deducted by Art. 22, Art. 23, and Art. 24 which has been paid/ payable overseas in previous FY, divided by 12.</td></tr>
<tr><td>d</td><td>Certain entrepreneur of individual taxpayers (other than freelance services)</td><td colspan="3">For certain taxpayers whose business place is different from the taxpayer’s residence, the Art. 25 instalment is calculated from gross turnover of each period and subject to effective rate of 0.75 per cent for each place of business. The instalments of Art. 25 is creditable in the calculation of annual income tax for the corresponding FY.</td></tr>
<tr><td>e</td><td>New taxpayers as per point (a), (b), (c), and (d)</td><td colspan="3">Should follow the arrangement for the specific type of taxpayer as mentioned above.</td></tr>
<tr><td>f</td><td>New taxpayers as the result of merger, business combination, and/or acquisition.</td><td colspan="3">The amount of Art. 25 instalment is the sum of all Art. 25 instalments of each taxpayer before the merger, business combination, and/or acquisition is done.</td></tr>
<tr><td>g</td><td>New taxpayers as the result of spin-off</td><td colspan="3">The amount of Art. 25 instalment refers to Art. 25 instalment before spin-off and is prorated based on the percentage of transfer of assets for each new taxpayer.</td></tr>
<tr><td>h</td><td>New taxpayers as the result of changing of the business form.</td><td colspan="3">The amount of Art. 25 instalment is based on the previous Art. 25 instalment prior to business changes.</td></tr>
<tr><td>i</td><td>New taxpayers other than the mentioned above</td><td colspan="3">The amount of Art. 25 instalment is NIL.</td></tr>
</table>

For point (a) and (b) above, if the financial statements have not yet been reported to OJK, Art. 25 instalment will follow the amount of the previous period and should be recalculated once the financial statements have been reported to OJK. Any resulting underpayment will be subject to administrative sanction, while overpayment can be overbooked to the next period.

For point (c) above, if the RKAP has not yet been approved in the general shareholders' meeting, Art. 25 instalment will follow the amount of the previous period and should be recalculated once it has been reported. Any resulting underpayment will be subject to administrative sanction, while overpayment can be overbooked to the next period.

→ Indonesia

Taxing Indonesian E-Commerce Businesses

According to a survey conducted by Google and Temasek in May 2016, the number of online shoppers in Indonesia is expected to reach 119 million by 2025, resulting in a significant increase compared to only 18 million shoppers in 2015. The Indonesian government has already been dedicating its attention to e-commerce business for a couple of years, when lastly the President issued Regulation No. 74 Year 2017, regarding E-Commerce Road Map 2017-2019. Recently, on 31 December 2018, the Ministry of Finance issued Regulation No. 210/PMK.010/2018 ("PMK 210") which specifically regulates the taxation treatment for transactions made through electronic system (e-commerce). This regulation will enter into force by 1 April 2019.

It is compiled in PMK 210 that e-commerce transactions may be settled through marketplace platform or non-marketplace platform (such as online retail, classified ads, daily deals, or social media). The scope of taxes covered in the regulation consists of value-added tax ("VAT"), sales tax on luxury goods, and income tax. The regulation mentions three key-players within e-commerce business: marketplace platform provider, seller (including service provider), and buyer (including service receiver) whom subject to the provisions in PMK 210.

MARKETPLACE PLATFORM PROVIDER ("MPP")

MPP must have *Nomor Pokok Wajib Pajak*/NPWP (tax identification number) and needs to be registered as VAT-able enterprise. This also applies even though an MPP is considered as 'small enterprise', i.e. having gross turnover of no more than IDR 4.8 billion (as stipulated by MoF Regulation No. 197/PMK.03/2013).

MPP must prepare and maintain the recapitulation of transactions that should be reported to the Directorate General of Taxes ("DGT") through an attachment in the monthly VAT return. Should an MPP provide services to sellers, related to marketplace platform, or deliver taxable goods and/or services, MPP needs to collect VAT through issuance of a tax invoice. MPP may provide data and information to the DGT related to the transactions made through non-marketplace platforms. In addition, the DGT may perform compliance tests on MPP to check whether or not it has been complying with the tax regulation.

SELLER OR SERVICE PROVIDER (subsequently referred to as "Sellers")

Sellers must submit their NPWP to MPP. In case a seller does not or not yet have NPWP, it may be replaced by *Nomor Induk Kependudukan*/NIK (resident identification number). The other option is to register themselves for NPWP through application as provided by the DGT or MPP.

Sellers with a gross turnover exceeding IDR 4.8 billion must register themselves as VAT-able enterprise. Meanwhile, those who are below threshold may choose whether to register themselves as VAT-enterprise or to conduct business as small enterprise. Once a seller has been registered as VAT-able enterprise, he shall collect VAT through the issuance of tax invoice whenever delivery of taxable goods and/or services is made.

SPECIAL TREATMENT FOR IMPORTATION OF GOODS

Importation of goods through MPP with the transaction:

a. Having a customs value of more than Free on Board (FOB) USD 1,500; or
b. Not using Delivery Duty Paid (DDP) scheme,

should follow the prevailing regulation regarding the importation.

In case the transaction:

a. is settled through an MPP which is registered in the Directorate General of Customs and Excise (DGCE);
b. is delivered by a post operator;
c. is having a customs value of up to FOB USD 1,500

though, its taxation treatment should follow PMK 210, according to which, in order to do importation, MPP with a high import frequency should request for approval through the DGCE. Once the request has been approved, MPP needs to provide the following documentation to the DGCE:

a. e-invoice for each delivery of goods; and
b. e-catalogue comprising description, code, category, specification, price, seller's identity, country of origin of the goods.

In doing so, MPP is obliged to use the DDP scheme. MPP should calculate import duties and/or import taxes and is responsible for the settling of the payable amount. If MPP does not fulfil its obligations, DGCE may freeze the importation approval, or in serious cases, revoke the importation approval.

CONCLUSION

Overall, there are no new taxes being introduced in PMK 210. Instead, the newly issued regulation emphasizes e-commerce business to be subject to the prevailing tax regulation, with the DGT being entitled to request information pertaining to the transaction settled in e-commerce platform from MPP.

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→ Malaysia

Malaysian Sales and Service Tax Updates

IMPORTED TAXABLE SERVICES SUBJECT TO SERVICE TAX

With effect as of 1 January 2019, imported taxable services, i.e. any taxable service accepted by any person (registered and non-registered person) in Malaysia from any person outside Malaysia, are subject to service tax. A registered person is required to account for imported taxable services with Form SST-02, whilst a non-registered person is required to do so with Form SST-02A.

A Malaysian company accepting taxable professional services as set out in the Service Tax Regulations from any company within the same group of companies outside Malaysia will, however, be exempt from paying service tax on imported services.

NEW TAXABLE SERVICES

With effect as of 1 January 2019, the scope of the service tax has been expanded, now including 4 new taxable services, i.e. amusement park services; brokerage and underwriting services; cleaning services and training or coaching services.

Any person providing these newly taxable services before 1 January 2019, will be required to apply for registration by 28 February 2019, in accordance with Section 13 of the Service Tax Act 2018, if there are legitimate reasons to believe that the total value of the persons taxable services provided in the month of January 2019 and the 11 immediately succeeding months will exceed the total value of RM500,000; and registration will take effect from 1 March 2019.

SALES TAX DEDUCTION FOR REGISTERED MANUFACTURERS

From 1 January 2019, registered manufacturers will be able to enjoy a sales tax deduction on inputs, i.e. raw materials, components and packaging materials purchased for the manufacturing of taxable goods, that have been supplied by a trader.

This model has been introduced because there are registered manufacturers who have no choice but to purchase components from traders instead of other registered manufacturers, or instead of importing the inputs.

Prior to the amendment, registered manufacturers could only obtain a sales tax exemption when purchasing inputs from other registered manufacturers or importing the inputs. With the introduction of this new model, registered manufacturers will now be able to enjoy a sales tax deduction according to the following scheme:

Category	Rate of sales tax deduction
For any taxable goods charged and levied with sales tax at the rate of 5 per cent	2 per cent of the total value of the taxable goods purchased
For any taxable goods charged and levied with sales tax at the rate of 10 per cent	4 per cent of the total value of the taxable goods purchased

The sales tax deduction will be based on the rates prescibed above and has to be availed in the Sales Tax Return Form for the taxable period during which the taxable goods have been purchased.

The amount of sales tax deduction on input purchased will be deducted from the amount of sales tax payable (sale of taxable finished goods) within the taxable period of the purchase of inputs made by a registered manufacturer. In case the sales tax to be deducted for any taxable period exceeds the total amount of sales tax payable, the remaining balance may be deducted in the next taxable period until the tax deduction has been claimed in full.

→ Malaysia

Introduction of Framework for Trading of Digital Assets

The Malaysian Securities Commission ("SC") has introduced new requirements for electronic platforms that facilitate the trading of digital assets with the entering into force of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 on 15 January 2019.

Digital currencies and digital tokens which are not issued or guaranteed by any government body or central bank, fulfilling the following features will be prescribed as securities:

a. The digital token is received in exchange for a consideration;
b. The consideration or contribution from the person, and the income or returns, are pooled;
c. The income or returns of the arrangements are generated from the acquisition, holding, management or disposal of any property or assets or business activities;
d. The person expects a return in any form from the trading, conversion or redemption of the digital token or the appreciation in the value of the digital token;
e. The person does not have day-to-day control over the management of the property, assets or business of the arrangement; and
f. The digital token is not issued or guaranteed by any government body or central banks as may be specified by the SC.

This Prescription Order provides certainty on how digital currencies and digital tokens will be classified and regulated in Malaysia. Persons who intend to issue digital currencies and digital tokens will have to seek prior approval of the SC and will be subject to licensing requirements under the Capital Markets and Services Act 2007 ("CMSA").

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→ Myanmar

New Trademark Law and Industrial Design Law

On January 30 2019, the Trademark Law and the Industrial Design Law were signed into law. In order for the new laws to become effective, the government needs to install an intellectual property office and a trademark data base. So far, there seems to be no official timeline. Furthermore, the Central Committee for Intellectual Property Rights and the Intellectual Property Rights Agency will be established.

While the old system worked with a first-use basis, the new system will apply a first-file system. Filings in other countries which are signatories to the Paris Convention are granted a six-month period after the law came into effect. Registrations under the old system with the Registration of Deeds Office may serve as evidence.

The law also allows for the installation of intellectual property courts, and regulates specific penalties for infringements. Registrations under the new system will be valid for 10 years.

While it will still take quite some time to become effective, this modernization of the trademark laws was a long awaited and necessary step within the reform process. The parliament is expected to pass the Copyright and Patents Bills soon in order to be in line with the WTO requirements.

Myanmar has to be in line with the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), to which it has acceded, by no later than 1 July 2021.

→ Myanmar

Condominium Law Implementation

After the Ministry of Construction released a notification in September 2018 to appoint the registrars for condominiums for 12 states and regions under the Condominium Law, the Yangon Condominium Registration Office became operational in January 2019. This was a crucial step with regard to the Condominium Law 2016, as the law only applies to buildings which are registered with Condominium Management Committees.

REGISTRATION AS CONDOMINIUM

In order to qualify for the registration as condominium under the Condominium Law, the project must be a residential development on a minimum floor size of 20,000 square feet of collectively owned land. However, the Condominium Rules also allow for the conversion of real estate owned by the state to collectively owned land in order to qualify projects as condominiums.

According to announcement of real estate developers, the Yangon Condominium Management Committee has already finalized the first registrations of buildings as condominiums, so that the law can finally be applied.

The Condominium Law allows for the purchase of condominiums in upper levels by granting proportionate ownership of the land. Purchases of flats or condominiums in non-registered buildings bear certain risks, as the ownership of the land will remain exclusively with the ground floor ownership. Therefore, banks are reluctant to offer financing. In contrast, the Condominium Law explicitly allows for the registered condominiums to be used as security in order to obtain loans from a bank.

The Condominium Law also allows for foreigners to purchase condominiums with the restriction that only up to 40 per cent of the units of a registered condominium project may be acquired by foreigners. The foreign ownership can be registered under the same conditions as the Myanmar ownership with the relevant Condominium Registration Office.

→ Myanmar

Consumer Protection Bill – Labelling Requirements

While the Ministry of Commerce has issued notifications requiring the labelling for fast moving consumer goods and pharmaceuticals in Myanmar language by April 2019, the parliament has approved amendments to the new Consumer Protection Law, which will delay the implementation of the labelling in Myanmar language for one year after the law has been enacted.

After this grace period, a product's name, type, size, quantity and ingredients must be indicated on the label in Myanmar language.

→ Myanmar

Central Bank Updates

CENTRAL BANK ALLOWS FOREIGN EQUITY STAKES IN LOCAL BANKS

On 29 January 2019, the Central Bank of Myanmar issued Regulation 1/2019 in order to align the restrictions of foreign equity in local banks with the definition of 'foreign company' of the Myanmar Companies Law - determinating that any company with a foreign equity share above 35 per cent shall be considered a foreign company.

As a consequence, a company with 35 per cent or less of foreign equity share is still considered a local company. With said regulation, the Central Bank allows for foreign investors to invest up to 35 per cent of the shares in local banks.

CENTRAL BANK CHANGES TO MARKET-BASED REFERENCE EXCHANGE RATE

In a further step towards modernization, the Central Bank changed the system for the daily published reference exchange to a market-based evaluation. The new reference course will be published at 4 pm daily.

Furthermore, the Central Bank will publish data on the daily Nominal Effective Exchange Rate and monthly Real Effective Exchange Rate.

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→ Philippines

Philippine Corporation Code Reformed

In line with the government´ s continuous efforts to improve the way of "Doing Business" in the Philippines, on 20 February 2019, Republic Act No. 11232, also known as the "Revised Corporation Code", was signed into law ("Revised Code").

After 39 years, the basic law of corporations, "Batas Pambansa Blg. 68" or "The Corporation Code of the Philippines", has received a significant overhaul. The "Old Code" has more or less remained unchanged since it came into force in 1980. Thus, over the years, some of the provisions parted with international best-practice, and particularly with the rapid developments of the Philippine and global economy.

As stated by one of the principal sponsors and authors of the New Code, Senator Franklin M. Drilon, the adaptations are focused on "removing barriers hindering the entry of both, small and large enterprises into the Philippine market".

The Revised Code comprises quite a number of fundamental changes. Please find the key changes outlined below:

ONE PERSON CORPORATIONS

One of the most significant changes for investors and to the overall structure of the code is the introduction of "One Person Corporations". Under the "Old Code", a Corporation required at least five incorporators to form an entity. The Revised Code permits the incorporation by a single stockholder. However, the stockholder has to be a natural person, trust or an estate.

These changes make it easier for small to medium-sized businesses to register an enterprise, particularly as an alternative to a sole proprietorship.

REDUCTION OF THE MINIMUM NUMBER OF DIRECTORS

More relevant, and a fairly significant practical change for corporate stockholders (e.g. Subsidiary Corporations), is the reduction of the minimum number of directors to the Board of Directors.

Under the Old Code, a corporation required at least five (5) directors. As of now, the Revised Code only requires one (1) director. It also seems that while before the majority of directors had to be residents of the Philippines, this requirement has been abolished (unless specific foreign ownership restrictions apply).

While, particularly for SMEs and larger companies, plenty of reasons persist to establish or maintain a board with more than one (1) member, it is - in line with international best-practice - now up to the corporation and its stockholders to decide on the preferred internal policies in this regard.

PERPETUAL EXISTENCE OF CORPORATIONS

Another amendment harmonizing the Revised Code with the legislation of many other countries is, that the prescribed lifetime of a corporation of 50 years - unless extended - has been abolished.

The new rules stipulate a perpetual existence of corporations, unless otherwise specified in the corporation´ s articles of incorporation.

COMPANIES OF PUBLIC INTEREST

A corporation still needs to have at least a President, a Treasurer and a Corporate Secretary of the company. In the future, corporations vested with "public interest" - such as public companies, banks and quasi-banks, non-stock savings loan associations or other corporations as determined by the Securities and Exchange Commission (SEC), will be required to appoint a "Compliance Officer".

They are as of now also required to submit additional annual reports to the SEC. Furthermore, the Revised Code reiterates the requirement to elect independent directors in these kinds of corporations. The independent directors shall henceforth constitute at least 20 percent of the entire board membership.

MODIFICATION OF THE PRESCRIBED MINIMUM CAPITAL STOCK

The new law provides for a modification of the prescribed minimum capital stock. In the past, entrepreneurs were obliged to subscribe at least 25 percent of the authorized capital. The Revised Corporation Code removed the aforementioned percentage, except for other specific provisions stipulated by special laws.

The alteration again works to the interests of small to medium-sized enterprises by making it easier for them to incorporate.

ARBITRATION

Moreover, the Revised Code clarifies that disputes within the corporation, with its stockholders or members, that arise from the implementation of the articles of incorporation, by-laws or from incorporate relations, may now be referred to arbitration - if the arbitration agreement has been embedded in the articles of incorporation or by-laws.

STAYING ABREAST OF TECHNOLOGY

In addition to the aforementioned changes, there are a number of technological adjustments. Which were in fact urgently needed, as the "Old Code" had been created before the era of emails, video conferences and other modern telecommunication technologies began.

Subject to implementing rules and clarifications by SEC, notices for (stockholder) meetings may now be communicated electronically, and stockholders as well as directors may make (more) use of electronic means for their formal communication. The latter not only including remote participation, but also remote voting to be allowed if it is provided for in the by-laws of the corporation.

CONCLUSIONS

The Revised Code came into force on 23 February 2019. Companies affected by certain provisions of the amended act are granted a period of two years from its effectiveness to comply with the new requirements.

In summary, the Revised Corporation Code falls in line with a number of significant reforms of the Philippine government to further improve its “doing business” environment, such as the Tax Reform for Acceleration and Inclusion (TRAIN I), the Anti-Red-Tape Law, the Review of the Foreign Investment Negative List etc.

The detailed implementation of the law, particularly by the Securities and Exchange Commission, still needs to be seen. Nonetheless, the Revised Corporation Code certainly provides another leap ahead to simplify, improve and modernize the county’s corporate governance framework.

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→ Singapore

Personal Data Protection

WHY GENERAL DATA PROTECTION REGULATION COMPLIANCE MATTERS IN ASEAN COUNTRIES

The European Union ("EU") General Data Protection Regulation ("GDPR") replaced the 1995 EU Directive which set out the framework for data protection regulation in the EU. The GDPR entered into force on 25 May 2018.

EXTRA-TERRITORIALITY SCOPE

Companies in ASEAN countries should be concerned about GDPR compliance as the GDPR might apply to them even though they do not have an establishment in the EU. The GDPR would apply to such companies if they (a) offer goods or services to individuals in the EU; or (b) monitor the behavior of individuals in the EU.

OFFERING GOODS OR SERVICES TO INDIVIDUALS IN THE EU

In order to determine whether goods or services are targeted to individuals in the EU, it must be ascertained whether the company in question specifically envisages offering goods or services in one or more EU member states.

The use of a language generally used in one or more EU member states; the accepted currencies; the mentioning of customers from EU member states; or the possibility of delivery to one or more EU member states are factors which would make it apparent that the company in question envisages offering goods or services to individuals in the EU.

Below please find an example of a company offering goods or services to individuals in the EU:

A company located in Singapore ("SingCo") runs an online shop. SingCo has no subsidiary abroad, and the online shop is available in English only. SingCo stores its customers´ data. Payment is accepted in both, Singapore Dollar and Euro. Deliveries to Germany and France are possible. Customers from Germany and France are redirected to a "com.de" and a "com.fr" domain. The separate domain name for customers in Germany and France; the possibility of payment in Euro; and delivery to Germany and France point towards the conclusion that SingCo addresses customers located in the EU. As such, the GDPR applies to SingCo.

MONITOR THE BEHAVIOR OF INDIVIDUALS IN THE EU

In order to determine whether a processing activity can be considered to monitor the behavior of individuals, it must be ascertained whether the individuals are tracked on the internet, including potential subsequent use of personal data processing techniques that comprise the profiling of an individual.

Below please find an example of a company monitoring the behavior of individuals in the EU:

A company located in Singapore ("SingCo") sells jewelry online. The jewelry can be paid for in Singapore Dollars only. SingCo only delivers to countries in ASEAN. SingCo, however, wishes to analyse the EU market to assess whether or not to extend its business there. Anyone using the website must accept the usage of cookies. SingCo analyses the geolocation data to determine where the users are located. SingCo processes the data to find out how many customers in the EU visit the website and what they are mainly interested in. SingCo is using web tracking to analyse the preferences of customers located in the EU. As such, the GDPR applies.

GDPR COMPLIANCE AS A MUST

Depending on the provisions infringed, penalties of up to EUR 10 million or 2 per cent of the total worldwide annual turnover of the preceding financial year (whichever is higher); or up to EUR 20 million or 4 per cent of the total worldwide annual turnover of the preceding financial year (whichever is higher) may be imposed.

Another reason why companies in ASEAN should be concerned about the GDPR arises from the fact that business partners in the EU are now increasingly requiring GDPR compliance as a prerequisite for dealing with overseas companies.

Companies in the EU want to ensure that their entire business network is GDPR compliant to avoid any risk. Not being in compliance with the GDPR requirements could result in a loss of business opportunities for companies in ASEAN.

→ Singapore

Singapore Personal Data Protection Act to be Amended

In Singapore, organizations which collect, use or disclose personal data must comply with the Personal Data Protection Act ("PDPA") which came into force in 2014.

INTRODUCTION OF DATA PORTABILITY

As part of an ongoing review of the PDPA, Singapore is considering the introduction of a data portability requirement which would allow individuals to request a copy of their data to be transmitted in a structured, commonly used and machine-readable format to another organization.

DATA BREACH NOTIFICATION TO BECOME MANDATORY

In order to ensure that the PDPA keeps pace with the evolving needs of businesses and individuals, while balancing the safeguarding of individual interests and the enabling of a legitimate use of personal data by organizations, Singapore intends to introduce a mandatory data breach notification regime as part of its proposed amendments to the PDPA.

These proposed amendments indicate that the Singapore PDPA is getting more in line with the EU's GDPR, which has already adopted the requirement of data portability and data breach notification.

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→ Thailand

Amendments to Labor Protection Act

In December 2018, the National Legislative Assembly of Thailand passed an amendment to the Labor Protection Act. The amendment will become effective 30 days after being published in the Royal Gazette. Amongst others, the following amendments have been made.

SEVERANCE PAY

Employees who have been employed for more than 20 years are now entitled to 400 days of severance pay)prior to the amendment, 300 days of severance pay was the maximum(. This is particularly important in light of the recently passed amendment that severance has to be paid to retiring employees. Companies are well advised to review whether they need to increase their respective accounting reserves.

MATERNITY LEAVE

Pregnant employees and new mothers are now entitled to 98 days of maternity leave (previously 90 days). However, the employer still only has to pay a share of 45 days of maternity leave.

TEMPORARILY CEASING BUSINESS OPERATIONS

Employees are entitled to a payment of 75 per cent of their current wage while the employer is temporarily ceasing business in whole or at part for a certain specific reason. Time and place for this payment must be clearly stated.

TERMINATION PAYMENTS

Wages and "other money which an employer is required to pay under the LPA" must be paid within three days from the termination effective date. Previously, severance had to be paid on the last day of employment.

INTERESTS ON OUTSTANDING PAYMENTS

Employees are entitled to interests at the rate of 15 percent on outstanding payments by the employer)for example wages, severance pay or payment in lieu of notice(.

→ Thailand

International Business Center

In the last quarter of 2018, the Thai government replaced the investment schemes “International Trading Center” and “International Headquarter” by the “International Business Center”. The reason for the replacement were concerns regarding international taxation raised by other countries in ASEAN.

On 29 December 2018, the Royal Decree No. 674 became effective, governing the following requirements and tax incentives)by the Thai Revenue Department(for the IBC:

REQUIREMENTS FOR OBTAINING THE TAX INCENTIVES

PAID-UP CAPITAL

On the last day of each accounting period, the IBC needs to have a paid-up capital of at least THB 10 million.

EXPENSES IN THAILAND

The IBC needs to have expenses of at least THB 60 million paid to recipients in Thailand in each accounting period)note that existing Regional Operating Headquarters and International

Headquarters can – if they wish to apply for the new tax scheme – benefit from certain special conditions(.

EMPLOYEES

An IBC needs to have at least 10 qualified employees (at least bachelor degree or similar relating to IBC business(; if the IBC conducts financial management, 5 qualified employees can be sufficient.

Please note that the Revenue Department may announce additional requirements.

TAX INCENTIVES

The IBC may benefit from the following tax incentives for a maximum of 15 accounting periods.

REDUCTION OF CORPORATE INCOME TAX

Depending on the expenses of the IBC business)paid to Thai recipients(, the CIT rate can be substantially lowered:

IBC EXPENSES	CIT RATE
>THB 60 million	8 per cent
>THB 300 million	5 per cent
>THB 600 million	3 per cent

EXEMPTION OF CORPORATE INCOME TAX

Dividends received from affiliated enterprises are exempted from Corporate Income Tax.

EXEMPTION OF SPECIFIC BUSINESS TAX

If the IBC renders financial management services to affiliated companies, income from such services can be exempted from the Specific Business Tax.

WITHHOLDING TAX

The payment of certain qualified dividends)i.e. income derived from certain services provided by IBC(are exempted from withholding tax.

PERSONAL INCOME TAX

Certain employees may apply for a Personal Income Tax Flat Rate of 15 percent.

PLEASE NOTE

If a company does not comply with the requirements necessary to receive the tax incentive in a given accounting period, the incentive will only be rescinded for such accounting period.Tax incentives granted to IBCs are independent from the general BOI promotion: Rescinding the tax incentive does not necessarily mean that the BOI will terminate the general IBC promotion.

Companies not eligible for the tax incentive may still apply for the IBC promotion in order to do wholesale in Thailand 100-percent foreign owned (promoted companies will receive additional non-fiscal incentives such as investment protection and eased requirements to obtain visa and work permits for foreigners).

→ Thailand

Smart Visa Change

The Smart Visa was introduced in early 2018 to further facilitate employment of expats in specially targeted industries. The main advantage of the Smart Visa is the combination of visa and work permit for a period of up to 4 years.

In late 2018, the BOARD OF INVESTMENT)BOI(announced new conditions and incentives for the Smart Visa:

GENERAL CHANGES

ADDED ELIGIBLE ACTIVITIES

The BOI added several new eligible activities in the following targeted industries:

- Alternative Dispute Resolution (New)
- Human Resource Development in Science and Technology (New)
- Environmental Management and Renewable Energy (New)
- Next-Generation Automotive
- Smart Electronics
- Affluent, Medical and Wellness Tourism
- Agriculture and Biotechnology
- Food for the Future
- Automation and Robotics
- Aviation and Logistics
- Biofuels and Biochemicals
- Digital
- Medical Hub

FAST-TRACK SERVICES AT INTERNATIONAL AIRPORTS

Smart Visa holder will be allowed to use fast-track services at all international airports)where available(.

SPECIFIC CHANGES

SMART "T" - TALENTS

The minimum monthly income for experts is decreased to THB 100,000)previously THB 200,000(. The minimum income can be reduced to THB 50,000 if the expert works for a local startup. In certain cases, even retired experts can be eligible for a Smart Visa "T".

SMART "E" – EXECUTIVES

For high level professionals and executives the minimum monthly income STAYS AT THB 200,000 but consideration now includes all income and bonuses.

SMART "I" – INVESTORS

If invested in a startup which is endorsed by the relevant authorities, the minimum investment requirement is lowered to THB 5 million)otherwise THB 20 million(.

SMART "S" - STARTUP

Startups can apply for Smart "S" visa now for three different periods: 6 months, 1 year and 2 years. The requirements for obtaining a 6 months visa have been reduced. The applicant does not have to deposit THB 600,000 in Thailand, and participating in a startup camp)or similar activities(is, if recognized by the relevant authorities, sufficient to be eligible for a Smart Visa.

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→ Vietnam

New Vietnam Competition Law

Promoting a competitive market as well as protecting trade and commerce against unlawful restraints and unfair competition are strictly necessary as the evolution of the Vietnamese economy continues to proceed.

The need for reform with regard to competition law as a legal instrument for enforcement has been addressed to lawmakers, resulting in the replacement of Vietnam Competition Law 2004 ("Current VCL") by Vietnam Competition Law 2018 ("New VCL").

The New VCL will come into force as of 1 July 2019, introducing substantial changes in both, substantive and procedure rulings. New provisions of the New VCL are considered to represent an important step forward for competition law in Vietnam, bringing domestic law in line with international best practices.

Below please find a survey of notable changes in the New VCL compared to the Current VCL.

UNFAIR COMPETITION

The term of 'unfair competition' has been revised in the New VCL, expanding the definition to conducts which are contrary to goodwill, honesty, commercial practices and/or other norms in business, and which cause or may cause loss and damage to the legitimate rights and interests of other enterprises. However, uncertain and rather elusive terms like this leave the regulator with the freedom of application on a case-by-case basis.

Most types of unfair competition activities proscribed by the New VCL are essentially identical with those provided in the Current VCL, comprising (i) infringement of business secrets; (ii) coercion in business; (iii) defamation; (iv) causing interruption; and (v) illegal luring of customers.

The New VCL additionally identifies a new type of prohibited unfair competition: The sale of goods and services below cost, driving or probably driving competitors out of the market.

It is important to note that the list of unfair competition activities provided in the New VCL is not intended to be exhaustive, since there are also scattered types proscribed by other legislations (e.g. law on advertising, intellectual property law, other implementing decrees, etc.).

RESTRAINTS OF COMPETITION

AGREEMENTS IN RESTRAINT OF COMPETITION FORBIDDEN BY LAW

Under the New VCL, more agreements in restraint of competition are now banned outright, including price fixing, market division, and restraint or control of quantity or volume of goods or services produced, purchased or sold. The combined market shares of the parties involved in the restrictive agreement are no longer the determinant of prohibition. Instead, the assessment of whether an agreement "*has or may have a significant competition restraining effect on the market*" conducted by the competition authority shall be the basis for prohibition. The assessment criteria include (i) market shares, (ii) market entry barrier, and (iii) access to critical infrastructure facilities.

Notably, the New VCL now applies to both, horizontal agreements between competitors and vertical agreements between non-competitors.

EXEMPTIONS TO PROHIBITED AGREEMENTS IN RESTRAINT OF COMPETITION

The New VCL still treats the following types of restrictive agreements as prohibited per se (without the possibility of exemptions): (i) bid-rigging, (ii) agreements which prevent, impede or do not allow other enterprises to participate in the market or to develop business, and (iii) agreements which exclude other enterprises which are not parties to the agreement from the market. Prohibited restrictive agreements other than those may be exempted for up to 5 years if they meet one of the requirements for exemption as prescribed by the New VCL.

Labor agreements and cooperation agreements in specialized sectors governed by other laws are subject to the regulations of these laws, not to the New VCL.

ABUSE OF MONOPOLY AND DOMINANT POSITION

For the first time, the Vietnamese lawmakers introduce the new concept of "significant market power" (SMP) to be distinguished from market shares, as defined and regulated in the Current VCL. SMP determines a dominance position of enterprise(s) in the market. Accordingly, dominance shall be deemed if:

- An enterprise has market shares of ≥ 30 per cent or has SMP;
- A group of enterprises has market shares of
    - ≥ 50 per cent (2 enterprises)
    - ≥ 65 per cent (3 enterprises)
    - ≥ 75 per cent (4 enterprises)
    - ≥ 85 per cent (5 enterprises)
    - or has SMP
- Any enterprise with market shares of less than 10 per cent in the relevant market is not assigned to the group of enterprises with dominant market position.

The SMP analysis shall be carried out based on non-exhaustive criteria, e.g. barriers to entry or expansion, control of infrastructure not easily duplicated, technological and commercial advantages or superiority, absence of or low countervailing buying power, economies of scale, etc.

ECONOMIC CONCENTRATIONS

PRE-NOTIFICATION PHASE OF ECONOMIC CONCENTRATIONS

Under the Current VCL, economic concentrations (mergers, acquisitions, consolidations, or joint ventures) must be notified if the parties have a combined market share of 30 to 50 per cent in any relevant market. With a valuation scheme based purely on market shares, it is difficult though to clearly identify the parties´ obligation to notify, dealing with uncertain and incomplete information in the market.

Alternatively, the New VCL assesses the following objective criteria of the parties with regard to the economic concentration in order to determine whether a transaction must be notified: (i) total assets on the Vietnamese market; (ii) total turnover on the Vietnamese market; (iii) transaction value; or (iv) combined market share of the parties in the relevant market. According to a drafted decree implementing the New VCL, the proposed notification threshold is met if in the preceding year: (i) either party's total assets in the Vietnamese market exceeds VND 1,000 billion; (ii) either party's total turnover exceeds VND 1,000 billion; (iii) the value of the transaction exceeds VND 500 billion; or (iv) the combined market shares of the parties cover a total of 30 per cent in the relevant market.

PROHIBITION OF ECONOMIC CONCENTRATION

Under the New VCL, the prohibition of economic concentrations based on market share has been replaced by an effects test. The new proper test assessing a "*significant competition restraining impact or the ability to cause a significant competition restraining impact*" of economic concentrations shall be used with various criteria, like combined market share of parties, the level of concentration in the relevant market and the impact on the chain of production, distribution and supply. In this regard, the Government is liable for the provision of detailed regulations.

ENFORCEMENT AND SANCTIONS

COMPETITION AUTHORITY:

Under the Current VCL, there are two different agencies with comparatively decentralized roles mandated to enforce the competition law:

- The Vietnam Competition Authority (VCA) constituted by the Ministry of Industry and Trade (MOIT) is mandated with handling matters in (i) control of economic concentrations; (ii) investigation and adjudication of unfair competition cases; (iii) investigation of restraints of competition; and (iv) accessing exemption requests and making recommendations to MOIT and the Prime Minister;

- The Vietnam Competition Council (VCC) established by the Government is responsible for hearing and adjudicating alleged infringement restraints of competition cases only.

Based on the current dual model, the substantial nature of any competition case must be thoroughly analyzed from the outset upon initiating competition litigation due to different agencies involved and different penalties to be levied.

In the recent case of Grab's acquisition of Uber in the Vietnamese market, VCA found that the parties may have infringed provisions on the obligation to notify about their acquisition and completion of forbidden transactions. Contrarily to this VCA conclusion, VCC took the position that case files must be returned to VCA for additional investigation. The debate over this case clearly indicates that the decentralization of power in one dedicated agency needs to be significantly more effective and timesaving.

Under the New VCL, the major change in this regard will be the centralized responsibility for competition law enforcement in the hands of the National Competition Commission (NCC), which will have the power to investigate and adjudicate cases involving restraints of competition and unfair competitive practices, to grant exemptions for restrictive agreements, and which will control economic concentrations. Consolidating the power of enforcement in a single agency by allocating a central position and function to NCC is intended to ensure the application of competition law as a whole.

BROADER SCOPE OF APPLICATION:

As of the effective date of the New VCL, the competition authority of Vietnam will have express authority to deal with offshore activities and transactions which have or may have a competition restraining impact.

SANCTIONS:

Violations of the competition law are sanctioned through the imposition of fines, the revocation of business licenses, and divestiture/unwinding of orders amongst others. Notably, the current Vietnam Criminal Code criminalizes certain restrictive agreements reaching the threshold with regard to the quantum of damage caused or the illegal profit gained stipulated by law, as well as in case of repeated offence.

Under the New VCL, the fines imposed shall be contingent upon the individual infringement:

- Unfair competition: maximum of VND 2 billion;

- Restraints of competition: 10 per cent and 5 per cent of total turnover for organizations and individuals respectively in the financial year prior to the year of breach, but less than the minimum fine imposed on violations as prescribed by the Criminal Code.

- Economic concentration: 5 per cent and 2.5 per cent of total turnover for organizations and individuals respectively in the financial year prior to the year of breach.

CLEMENCY PROGRAMS:

The New VCL introduces a new leniency policy for enterprises engaging in restrictive agreements. Parties may be entitled to an exemption or reduction in penalties if they satisfy all following requirements: (i) to voluntarily declare the breach before the NCC issues a decision on investigation; (iii) to declare truthfully and to provide all available information and evidence on the breach being helpful for the disclosure, investigation and resolution of the breach; and (iv) to fully cooperate during the investigation and resolution of the breach.

This policy is only available for the first three successful applicants, with exemption of up to 100 per cent of penalty being applied to the first successful applicant, and a reduction of 60 per cent and 40 per cent of penalty being applied to the second and the third applicant respectively.

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→ 2nd ASEAN Forum Singapore

Review

After a successful premiere in 2018, we had the pleasure to once again host more than 100 international guests at our 2nd ASEAN Forum in Singapore on 24 January.

One of the topics lively examined and discussed during this year´ s Forum was the rapid economic growth in Vietnam – which is expected to be continued in 2019 with an anticipated growth rate of 7 per cent, and further stimulated by economic reforms comprising the improvement of the investment environment and the simplification of administrative processes.

Besides important business essentials like taxation in times of increasing digitization, transfer pricing, audit procedures, development in free trade and the establishment of regional holding structures, our internal and external experts also took a close look on some of today´ s hot topics: Renewable energy, blockchain and its relevance for tomorrow´ s industries as well as the increasingly intense “war for talents” from an employer´ s perspective – to name a few.

Our guests from a wide variety of business sectors did not only take a chance on attending the expert sessions to obtain valuable information and new insights. They also engaged in lively discussions with our experts and their fellow guests to gain fresh inspiration and valuable new impulses on eye-level.

We are looking forward to the

3RD ASEAN FORUM IN SINGAPORE ON 13 FEBRUARY 2020.

SAVE THE DATE!

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