

# Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:  
Q3/2019

Latest news on law,  
tax and business in ASEAN

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## → Note from the editor

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Dear reader,

Welcome to the Q3/2019 edition of our ASEAN Newsflash.

We enter the Oktoberfest season with a range of interesting developments in the ASEAN-jurisdictions.

Indonesia has issued new regulations for construction services which could be of specific interest amid the government's recent official announcement to relocate the capital from Jakarta to Kalimantan, where a newly planned city will require major construction activities. Myanmar initiated significant infrastructure developments as well in the fields of renewable energies and public transportation.

The signing of the Singapore Convention on Mediation, having the aim to encourage cross-border mediation, on 7 August by 46 states is a positive sign in times of growing trade tensions, especially as the US and China belong to the signatory states (while the EU has not yet clearly positioned itself).

Last but not least, please be informed that our firm's 5th M&A Dialogue will take place on 22 October 2019 at our headquarters in Nuremberg. An exciting day with international and interdisciplinary lectures on actual transaction topics awaits you. If you are interested in the event, please refer to this [link](#).

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### Please note

We have received and registered your contact details for the purpose of providing you with our quarterly ASEAN Newsflash. We assume that you are still interested in receiving this publication. Should you wish though to no longer receive the ASEAN Newsflash, please simply send [unsubscribe](#) to: [bettina.meyer@roedl.com](mailto:bettina.meyer@roedl.com).





## → Indonesia

### New Regulations for Construction Services in Indonesia

The Government of Indonesia has enacted the General Works and Housing Minister's (MPW) Regulation No. 09/PRT/M/2019 in June 2019, introducing changes to the business activities of foreign Construction Service Entities (Badan Usaha Jasa Konstruksi Asing/BUJKA) in Indonesia. Below please find an outline of some key changes imposed by Regulation 09, differing notably from the previous regulatory regime:

- (1) Business Licenses eligible for the acknowledgement as BUJKA shall now be applied for directly via the Online Single Submission (OSS) system. These Business Licenses are divided into Representative License (Izin Perwakilan) and Foreign Investment License (Izin PMA).
- (2) Regulation 09 provides a more stringent requirement as to the foreign shareholders of a PMA Construction Company, as it now requires them to have a large scale qualification. However, it is not yet clear how the MPW will determine such large scale qualification of the foreign shareholder.
- (3) A BUJKA Representative Office (RO) is supposed to hire an Indonesian national as Chief Officer (Penanggungjawab BUJK/PJBU). In the event that this is not feasible, an Indonesian national should at least be hired as Technical Chief Officer (Penanggungjawab Teknis BUJK/PJTBU). To qualify as a PJTBU, the applicant should possess a grade 9 (nine) professional expert competence certificate or an ASEAN Architect certificate or an ASEAN Chartered Professional Engineer certificate. Regulation 09 now also generally imposes stricter manpower requirements for a BUJKA Representative Office which is now required to employ more Indonesian experts than foreign experts. This issue has not been expressly addressed under the previous regulation.
- (4) To extend an existing Izin Perwakilan/Representative License, a BUJKA should provide a corresponding evaluation result. Under Regulation 09, such evaluation result shall be applied for in the OSS System.
- (5) Regulation 09 no longer allows the BUJKA Representative Office to form a joint operation with a foreign investment construction company, which used to be permitted under the previous regulation.
- (6) The new Regulation 09 does also provide a mechanism to apply for an Izin PMA revocation through the OSS system. Such revocation may now be effected after the BUJKA foreign company has duly settled all its legal obligations, e.g. tax debts or administrative sanctions (if any). Previously, a revocation has only been realized as a sanction imposed by the respective authorities.

→ Indonesia

### New Provisions on Mutual Agreement Procedure

Indonesia needs to adopt the international tax development associated with the implementation of the minimum standards according to action plan Number 14 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) regulations concerning the prevention and resolution of international tax disputes. Therefore, the Minister of Finance (MoF) issued MoF Regulation No. 49/PMK.03/2019 (PMK 49), dated 26 April 2019, regarding MAP - revoking the previous PMK 240 on the same subject. The

main objective of PMK 49 is to provide legal certainty pertaining to the procedure, timeline and follow-up actions of the Mutual Agreement Procedure (MAP) requirements.

#### MAP PROCEEDINGS

Taxpayers may request an MAP when the Competent Authority (CA) on the part of the treaty partner does not treat the taxpayer appropriately

in accordance with the tax treaty. Besides, the MAP may also be requested by Indonesian citizens with dual residency, by the Indonesian Director of Tax or by the Tax Authority of a treaty partner through the relevant CA.

Upon approval of the request, the Tax Directorate General (DGT) shall conduct bilateral negotiations with the CA of the contractual partner within 24 months after either receiving the MAP request from the CA of the treaty partner, or after submitting the request to the CA of the treaty partner. During the negotiation process, the DGT is authorized to request additional information, to visit the business location of the applicant, to perform a tax information exchange, and/or to conduct a tax audit. Meanwhile, the CA of the treaty partner may only request additional information through applying for an exchange of

information with the DGT and/or through a direct request during the negotiation process. If the aforementioned provisions are not met, the negotiations may be discontinued. Nevertheless, the applicant may as well withdraw his request prior to the agreement coming into force. The result of the negotiations may either be an agreement or a disagreement, while in the latter case the DGT or the Indonesian taxpayer will still need to perform follow-up actions depending on the result.

In conclusion, PMK 49 does provide legal certainty with regard to MAP, being expected to offer alternatives as to the resolution of international tax disputes.

→ Indonesia

## Encouraging Property Sector Through Tax Relief for Luxury Residences

In recent years, the Indonesian property sector has been facing a noticeable slowdown. In an attempt to boost the performance of this specific sector, the Indonesian government introduced some new regulations, particularly in the field of taxation. These include Minister of Finance (MoF) Regulation No.86/PMK.010/2019 (PMK 86, amendment to PMK 35), dated 11 June 2019, and MoF No.92/PMK.03/2019 (PMK 92, amendment to PMK 253), dated 19 June 2019. PMK 86 stipulates the luxury-goods sales tax rates (LST) on luxury goods other than vehicles, while PMK 92 refers to article 22 regarding income tax on very luxury goods.

As per the prevailing regulation, luxury residence is now subject to an LST of 20 per cent. According to the old regulation, luxury residences could be classified into two categories. (i) houses and town houses with non-strata title, with a selling price of more than or equal to IDR 20 billion; and (ii) apartments, condominiums, town houses with strata title and the like with a selling price of more than or equal to IDR 10 billion. However, with PMK 86 the threshold of the selling price has been revised to currently IDR 30 billion, regardless of the type of residence.

Further to the above, very luxury residences are subject to income tax article 22, stipulating an LST rate of now 1 per cent, which has been reduced from the previous rate of 5 per cent.

According to the former regulation, very luxury residences have been (i) landed properties with a selling price of more than IDR 5 billion or more than 400 m<sup>2</sup> of building area, and (ii) apartments, condominiums, and the like with a selling price of IDR 5 billion or 150 m<sup>2</sup> of building area. As per the new regulation, the selling price for both categories has been raised to a uniform threshold of IDR 30 billion, while the building area parameters remain the same.

It is expected that the implementation of the new regulations will boost business with luxury residences, entailing a positive impact on the overall performance of the domestic property sector.

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## → Malaysia



### New Earning Stripping Rules (“ESR”)

On 28 June 2019, the Income Tax (Restriction on Deductibility of Interest) Rules 2019 were gazetted to implement the ESR under Section 140C of the Income Tax Act 1967 (“the Act”). The rules came into effect on 1 July 2019.

This legislation on interest restriction is based on the Base Erosion and Profit Shifting (“BEPS”) Action 4 of the Organisation for Economic Cooperation and Development (“OECD”), aiming at the prevention of base erosion through the use of excessive interest expenses or any payments which are economically equivalent to interests claimed by businesses. Part of this legislation has been adopted directly from the OECD BEPS Action 4, whilst other parts have been customised to ensure adherence to the Act and the Malaysian Inland Revenue Board’s (“IRB”) procedures as well as to specific domestic circumstances.

The new ESR shall apply to persons who have been granted any financial assistance in a controlled transaction from an associated person outside Malaysia. This associated person outside Malaysia may either be operating through a permanent establishment in Malaysia, or be a third party outside Malaysia with the financial assistance being guaranteed through its holding company or any other enterprises under the same MNE Group, with the total amount of interest expense exceeding MYR 500,000 in the basis period for a year of assessment (“YA”).

The maximum amount of interest shall not exceed 20 per cent of the tax-EBITDA of that person from each business source for the basis period. The tax-EBITDA is the sum of the adjusted income from its business sources (A), the total amount of qualifying deductions allowed in ascertaining the amount of adjusted income (B) and the total amount of interest expenses incurred in relation to the gross income of that person for any financial assistance in controlled transactions from its business sources (C).

The excess interest expenses over the amount ascertained can be carried forward and deducted

against the adjusted income of the company for subsequent YAs until the whole amount has been fully utilised – provided that the shareholding structure remains the same.

The new Earnings Stripping Rules will not apply to:

- an individual;
- a licensed bank, licensed investment bank, licensed insurer or professional reinsurer as defined under the Financial Services Act 2013;
- a licensed Islamic bank, licensed takaful operator or professional retakaful operator as defined under the Islamic Financial Services Act 2013;
- a Labuan bank or Labuan investment bank licensed under Part VI of the Labuan Financial Services and Securities Act 2010;
- a Labuan Islamic bank or Labuan Islamic investment bank licensed under Part VI of the Labuan Islamic Financial Services and Securities Act 2010;
- a Labuan insurer or reinsurer, including a Labuan captive insurance business licensed under Part VII of the Labuan Financial Services and Securities Act 2010;
- a Labuan takaful operator or retakaful operator, including a Labuan captive takaful business licensed under Part VII of the Labuan Islamic Financial Services and Securities Act 2010;
- a development financial institution which is prescribed under the Development Financial Institutions Act 2002;
- a construction contractor as defined under the Income Tax (Construction Contracts) Regulations 2007;
- a property developer as defined under the Income Tax (Property Developer) Regulations 2007; or
- a person having been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the ITA in respect of the adjusted income of the person.

→ Malaysia

## New Guidelines on Taxation of e-Commerce Transactions

Due to the fast changing e-commerce landscape, the IRB has issued a new Guideline on Taxation of Electronic Commerce Transactions dated 13 May 2019, which supersedes the previous guidelines issued on 1 January 2013.

The new guidelines seek to provide guidance on the tax treatment of e-commerce transactions. The guidelines define what is meant by an “e-commerce” transaction and identifies the common e-commerce business models in existence.

The salient points of the guidelines are as follows:-

- “e-commerce transaction” is defined as any sale or purchase of goods or services conducted via any networks by tools specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered through those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments and other public or private organisations.
- The IRB adopts the principle of neutrality where both, e-commerce and conventional transactions, are subject to the same tax treatment. As such, taxpayers in similar

situations and carrying out similar transactions shall be subject to the same tax treatment.

- **SCOPE OF TAX LIABILITY FOR BUSINESS INCOME** – Where the business operations are carried on in Malaysia, the income of a person attributable to those business operations is deemed to be derived from Malaysia. The determination of whether or not the income is derived from Malaysia is a question of fact. The use of placement and location of servers and websites in determining the source of income has been removed from the new guidelines.
- **SCOPE OF TAX LIABILITY FOR SPECIAL CLASSES OF INCOME** – The new guidelines include a section to address e-commerce transactions that will be subject to withholding tax under Section 109B of the Act if the transactions fall under the scope of Section 4A – Special Classes of Income and are performed in Malaysia.
- **SCOPE OF TAX LIABILITY FOR ROYALTY** – The new guidelines align with the new definition of royalty in the Act, whereby the word “software” has been added.

→ Malaysia

## Labuan Investment Committee – Pronouncement 1-2019

The Labuan Investment Committee, comprising the Ministry of Finance (“MOF”), the Labuan Financial Services Authority (“LFSA”), and the IRB has been established to recommend policies and monitor the enforcement of the substantial activity requirements for Labuan IBFC. The Committee issued its first Pronouncement 1-2019 (“the Pronouncement”) on 19 June 2019, to clarify the following:

### NON-APPLICATION OF THE RESTRICTION OF DEDUCTION FOR PAYMENTS MADE TO LABUAN ENTITIES

With effect from 1 January 2019, the deduction for payments made by a resident to a Labuan entity has been restricted as follows:

- interest expense and lease rental (33 per cent not deductible);
- other payments (97 per cent not deductible)

The Pronouncement clarifies that such restriction is not applicable to payments made by a resident general insurer to a Labuan re-insurer; as well as to those made by a resident to a Labuan entity which elected to be taxed under the Act.

## COMPLIANCE WITH SUBSTANTIAL ACTIVITY REQUIREMENTS

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Labuan entities are to submit a self-declaration of their compliance to the substantial regulations of the IRB together with their annual tax filing by March 2020 (or the IRB's approved extended period). The first basis year to be declared is 2019, and the manner of declaration will be promulgated at a later

date. Labuan entities which are dormant, struck-off, under liquidation or wound up, not deriving any income, need not comply with the substantial activity requirements.

## MEANING OF FULL-TIME EMPLOYEES

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Full-time employees shall include at least an officer of a managerial capacity and other employees, including non-managerial and clerical staff who may be employed on permanent/contract basis to serve the Labuan entity on a dedicated basis.

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## → Myanmar



### Myanmar's first solar plant

On 27 June 2019 Myanmar's first solar power plant, the Minbu Solar Power Plant, located in Minbu Township in Magwe Region, started generating energy after the completion of the first of four stages of construction. Currently, the plant is capable of producing up to 40 MW of electricity. The next two stages will add further 40 MW each, while the last and final stage will contribute another 50 MW, resulting in a total capacity of 170 MW. According to the META Corporation (Thailand), the project's contractor and developer, it will be ASEAN's largest solar power plant.

This is an important step on Myanmar's long way to achieving its goal of 100 percent electrification by 2030. Currently, the country produces only between 2.9 and 3.1 gigawatts of electricity, which barely allows to supply energy to the 44 percent of the population having access to the national grid. The expected 170 MW from the new plant will therefore only slightly improve the national power supply. As Myanmar's economy

continues to grow, the demand for electricity will constantly rise in the foreseeable future. The World Bank predicts that the total demand will reach 12.6 gigawatts by 2030.

Overall, Myanmar's potential for the use of solar power is considered comparably high. In 2016, the economic research institute "International Growth Centre" which is located at the London School of Economics, evaluated that a theoretical annual potential of up to 51.9 terawatts, the equivalent to 51,900 gigawatts, could be generated through solar power in Myanmar. Currently, approx. 70 percent of the country's electricity is generated by hydropower. Due to the long construction periods of new hydropower stations and the fact that water levels in the rivers of Myanmar are at a historical low, solar power seems to offer a solution to the ongoing power supply challenge.



→ Myanmar

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## Official tourism website

Myanmar's first official tourism website has been created this year.

The newly published website [www.tourisminmyanmar.com.mm](http://www.tourisminmyanmar.com.mm) shows the best places to go in Myanmar and the activities to enjoy in the different destinations. It presents various travel routes and provides practical information and planning advice for a trip to the countryside.

→ Myanmar

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## Alternative market for stock exchange

The Yangon Stock Exchange has been established in 2016 by the state-owned Myanmar Economic Bank, the Daiwa Institute of Research and the Japan Exchange Group. However, only five companies are listed so far. In April, the Myanmar Stock Price Index ranged at one-third of its launch level. The Daily trading volume average has only been 46 million kyat (30.000 USD) over the past year. Private companies have been admitted to list once they were approved by the regulator, the Securities and Exchange Commission of Myanmar. As many local companies have weaknesses in transparency and business discipline, obtaining the approval of the regulator is challenging.

Thus, the regulator and the Yangon Stock Exchange are working on a system to introduce an alternative market where investors can trade shares of unlisted companies. This market shall encourage companies to register because it does not require the fulfillment of any standards. The companies will just have to submit financial information and plans for future public offerings within five years. On the other hand, the companies fulfilling the former standards and not being listed yet, will have to join the alternative market first to get the approval for the Yangon Stock Exchange.

→ Myanmar

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## Short financial year

This year, the beginning of the financial year in Myanmar has been changed from 1<sup>st</sup> of April to 1<sup>st</sup> of October and will thus as of now end on the 30<sup>th</sup> September of the following year instead of the 31<sup>st</sup> March. This leads to one exceptional short financial year in 2019, only running from 1<sup>st</sup> of April until 30<sup>th</sup> of September 2019, also requiring an additional filing of the financial statements and tax returns.

For the calculations of income tax and commercial tax threshold amounts, the relevant amounts of a normal (12 months) period are cut half. Despite the new tax administration law, which will come into effect on 1st October 2019, the enactment of the Union Tax law 2019 is expected soon.

→ Myanmar

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## First steps in Yangon's sky train project

In August 2019 the Japan International Cooperation Agency (JICA) and the Ministry of Transport and Communication started the land

surveys for the Yangon Urban Mass Rapid Transit (YUMRT) project.

The project is part of Yangon's 2040 master plan and will be financed by overseas development assistance from the Japanese government. It has provided an ODA loan with 0.01 percent interest rate and 40 years of repayment period. As soon as the land surveys have been completed, the government will start acquiring the required land by paying compensations based on current market rates. The construction period of the new elevated train shall start after the survey and design period, which is scheduled from 2018 to 2022.

The first phase of the project will connect eastern and western parts of Yangon. The 18 km track will start at Hlaingthaya Station, cross the Hlaing River along the Bayinnaung Bridge and end at Parami Station.

The railway will connect 13 stations and is expected to be completed by 2027.

The project's second phase covers a 27 km north-south connection from Mingaladon Airport to Dala township and is planned to be finalized by 2035.

The sky train shall be based on standard models of Thailand and Indonesia having minimal impact on the environment and the community. The YUMRT will for the first time provide Yangon urban people with a mass transport service.

→ Myanmar

## Public Holidays 2019 and 2020

Contrary to recent years' procedures, the government has announced to recoup public holidays which fall on a weekend day onto a working day with immediate effect (notification 49/2019 and 50/2019 in August 2019). Thus the public will be enjoying 3 additional work-free days this year, and another 8 additional holidays in 2020.

It remains to be seen whether this occurred in regard of the upcoming elections at the end of 2020, or actually represents a general shift of policy.

The following tables show the remaining public holidays of 2019, taking into account the notification 49/2019 and the public holidays of 2020 taking into account the notification 50/2019.

PUBLIC HOLIDAYS 2019	OLD DATES	RECOUP ON WEEKDAYS
Full Moon Day of Thadingyut (End of Buddhist Lent)	October 12, 13, 14	October 11, 15
Full Moon of Tazaungmone	November 10, 11	November 12
National Day	November 21	-
Christmas Day	December 25	-

PUBLIC HOLIDAYS 2020	OLD DATES	RECOUP ON WEEKDAYS
New Year's Day	January 1	-
Independence Day	January 4	January 6
Union Day	February 12	-
Peasant's Day	March 2	-
Full Moon Day of Tabaung	March 8	March 9
Armed Forces Day	March 27	-
Thingyan (Water festival)	April 12, 13, 14, 15, 16	April 10
Myanmar New Year	April 17	-
Labour Day	May 1	-
Full Moon Day of Kasong	May 6	-
Marty's Day	July 19	July 20
Full Moon Day of Waso	August 3	-
Full Moon Day of Thadingyut	October 30, 31 November 1	October 29 November 2
Full Moon of Tazaung Mone	November 28, 29	November 27, 30
National Day	December 9	-
Christmas Day	December 25	-
New Year's Eve	December 31	-

→ Myanmar

## Tax exemptions for development projects

On 8 August 2019 the Ministry of Planning and Finance enacted the notification No. 69/2019 which stipulates several tax exemptions for development projects and will enter into force on the 1<sup>st</sup> of September 2019. According to the notification, companies and employees who are involved in development projects which are based on grant aid or concessional loans shall benefit from those tax exemptions. In case of a project based on grant aid, the tax exemption is applicable on the personal income tax of foreign employees, the income tax of supporting companies and the commercial tax on products and services that are required to serve the purpose of the project. If a development project is financed by concessional loan, the exemption affects the income tax for the loan interest, the income tax for the main contractors and the personal income tax of foreign employees. In order to obtain those tax benefits, an application including the relevant documents has to be submitted to the Ministry of Planning and Finance, which will then be forwarded to the Internal Revenue Department (IRD). The IRD will issue the so-called Tax Exemption Certificate.

The new tax exemptions will only be linked to the respective project and not per se to the organization or company that implements the project. Therefore NGO's or INGO's will not obtain a general tax exemption for their projects.

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## → Philippines

### State of the Nation Addresses

The State of the Nation Address (SONA) is a constitutional obligation and yearly tradition delivered by the President of the Philippines. The chief executive reports on the status of the country unveil the government's agenda for the coming year(s), and propose key legislative measures to the Congress.

President Rodrigo Duterte delivered his 4th State of the Nation Address on Monday, July 22, 2019.

Below please find the highlights of his speech:

#### FIGHT AGAINST DRUGS

The fight against drugs was a key promises of the president in his election campaign, and his tough stand on the so called "War on Drugs" repeatedly made it to the international press. In the SONA he repeated his request to the Congress to restore the death penalty in the Philippines as punishment for "heinous crimes related to drugs" and plunder.



## FIGHT AGAINST CORRUPTION

Another key promise of the Duterte administration is to continuously lower corruption and red-tape in the Philippine government agencies. Despite various efforts being made (e.g. the recent establishment of the Anti-Red Tape Authority 'ARTA' or the Presidential Anti-Graft Commission 'PAGC'), the President expressed his frustration about the progress not being fast enough, vowing that he will spend the remaining three years of his term particularly focusing on the fight against corruption.

## SERVICE IMPROVEMENTS

The president implored the government agencies to improve their services and to ensure their responsiveness to people's needs. He mentioned the Land Transportation Office (LTO), the Social Security System (SSS), the Bureau of Internal Revenue (BIR), the Land Registration Authority (LRA), the Bureau of Customs (BoC) and the Home Development Mutual Fund (HDMF or PAG-IBIG Fund) as the top five agencies needing improvements in their service delivery. The President also expressed his preference for the issuance of (standard) permits to take no longer than 3 working days.

## ECONOMIC DEVELOPMENT

The President touched fairly little topics on the economic development of the country. He urged the Congress to pass the second part of the Comprehensive Tax Reform Program (TRABAHO) and the Salary Standardization Laws. TRABAHO is the second package of a major tax reform, which will focus primarily on corporate tax matters and likely lower the Corporate Tax Rate from 30 Percent to 20 per cent - 25 per cent.

## LAND USE PLANNING

The National Land Use Act (NLUA) has been taking its rounds in Congress for about two decades,

→ Philippines

## Social Security System Condonation Program

Together with PhilHealth, Pag-Ibig/HDMF the Philippine Social Security System (SSS) builds the core pillars of the Philippines' social security framework. SSS is a state-run social insurance

despite the last two Presidents having declared this legislative matter to be 'urgent'. The act is meant to create a national land use authority to craft development plans by classifying land according to the use for conservation, agriculture, settlement, infrastructure and economic developments. The law shall serve the demands of new investors, spread economic activities more equally and build the foundation for comprehensive economic development plans. The president set a deadline, expecting the law to be passed within this year.

## POVERTY

The president also briefly touched on the country's poverty rate, stating that from 2015 to 2018 the poverty rate has fallen from 27.6 per cent to 21 per cent, which may amongst others be attributed to the positive economic development of the country.

## WESTERN PHILIPPINE SEA

Duterte also spoke about the critical topic of the dispute with China regarding the West Philippine Sea. He emphasized that his administration recognizes this area as part of the country's territory, but that the government wants to avoid an open conflict with China.

The Philippines as well as other Southeast Asian Nations such as Brunei, Malaysia and Vietnam have overlapping claims to the sea along with China.

Duterte was the subject of criticism after he downplayed a West Philippine Sea incident. A Filipino boat was slammed and sunk by a Chinese owned vessel near Recto Bank (aka Reed Bank) in Palawan. Duterte called it a mere maritime incident.

agency's fund. The amount depends on each person's respective salary bracket and a salary ceiling applicable to all members. Members will enjoy insurance benefits such as sickness, maternity, disability, retirement, death and funeral support, and may apply for specific loans.

On March 5, 2019 the Social Security Act of 2018 repealed the previous legislation. It increases the monthly contribution rate to 12 per cent from the previous 11 per cent. This increase will be followed by three more 1 percentage point increases in 2021, 2023 and 2025, until the contribution rate will have reached 15 per cent. Additionally, the law aims to strengthen the state pension fund through the setting of minimum and maximum monthly salary credits, and the expansion and mandatory coverage of the fund for certain individuals. Furthermore, the investing capacity of the pension fund has been expanded in order to generate better income and improved benefits for its members.

Moreover, the same law provided a condonation program which delinquent employers can apply for. Any employer who is delinquent or has not remitted all contributions may avail of the condonation program. This includes employers

who are not yet registered with the SSS and those against whom final judgments have been rendered by the courts for non-payment of contributions. It's a one-time amnesty program expected to waive billions of penalties of its members.

On June 26, 2019 the SSS urged more than 115,000 delinquent employers to settle the unpaid premiums of their employees through the condonation program.

Employers who fail to settle their unpaid premiums will be held criminally liable.

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## → Singapore



## The United Nations Convention on International Settlement Agreements Resulting from Mediation

- (1) On August 7, 2019, the United Nations Convention on International Settlement Agreements Resulting from Mediation (the [SINGAPORE CONVENTION](#)) has been signed in Singapore by 46 States. In essence, the Singapore Convention shall improve mediation as a cross-border dispute resolution, like the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards for arbitration.
- (2) Amongst the signatories are Singapore, Malaysia, the Philippines, China, India, South Korea and the United States. Member states of the European Union or the European Union itself are not part of the signatories. In past UN negotiations, Germany has been critical about the necessity of such convention.
- (3) The Singapore Convention seeks to facilitate the global enforcement of international settlement agreements that have been reached through mediation, and will come into effect 6 months after its ratification by at least 3 countries.
- (4) The Singapore Convention will only apply where the settlement agreement has been recorded in writing as a result from a mediation - an agreement between 2 or more parties that have their place of business in different states, the place of business of each of the parties to the agreement being located in a state that has acceded to or ratified the Convention;
- (5) It will not apply to settlement agreements (a) concluded to resolve a dispute arising from transactions engaged in by one of the parties - a consumer - for personal, family or household

- purposes; or (b) relating to family, inheritance or employment law;
- (6) Further, the Singapore Convention will not apply to (a) settlement agreements that have been approved by a court or concluded in the course of proceedings before a court, and that are enforceable as a judgment in the state of that court; or (b) to settlement agreements that have been recorded and are enforceable as an arbitral award;
- (7) Currently, mediated settlement agreements which are the result of mediation negotiations between two or more commercial parties in a dispute cannot be enforced across national boundaries. A non-breaching party would have to commence an action against the breaching party either through litigation or arbitration to enforce the mediated settlement agreement;
- (8) The Singapore Convention will require member states to enforce international settlement agreements reached through mediation directly, without requiring the non-breaching party to sue under the agreement. The enforcing party will only be required to produce a copy of the settlement agreement together with evidence that the agreement has been reached through mediation.
- (9) Member states will only be allowed to refuse an enforcement due to the following reasons:
- (a) a party to the settlement agreement was under an incapacity;
  - (b) the settlement agreement is null and void, inoperative or incapable of being performed under the law which it is subjected to;
  - (c) the settlement agreement is not binding according to its terms or has been subsequently modified;
  - (d) the obligations in the settlement agreement have been performed or are not clear or comprehensible;
  - (e) granting relief would be contrary to the terms of the settlement agreement;
  - (f) there has been a serious breach by the mediator of standards applicable to the mediator and without which breach that party would not have entered into the settlement agreement;
  - (g) there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement;
  - (h) granting relief would be contrary to the public policy of the state; or
  - (i) the subject matter of the dispute is not capable of settlement by mediation under the laws of the state.

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## → Thailand



### Customs – Voluntary Disclosure Program Extension

Thailand has extended the voluntary disclosure program until 30 April 2020. Under this program, businesses may receive amnesty on penalties for unintentionally underpaid customs duties.

If a business is eligible, it may be exempted from customs penalty. Furthermore, the monthly surcharge on the underpaid amount can be lowered to between 0.75 and 0.25 percent.

Please note: The authorities exercise discretion, and any submission should be prepared carefully. Certain businesses may not be eligible for the voluntary disclosure program, for example if they are already under investigation for customs violations. The program does not extend to penalties and surcharges regarding VAT.

→ Thailand

### Medical Certificate Required for Foreign Employees of BOI Promoted Companies

According to new internal regulations of the “One-Stop-Service Center” in Bangkok, Labor Section, foreigners applying for a work permit in a company promoted by the Thai Board of Investment (BOI) have to present a medical certificate specifying that the applicant is free from the following diseases:

- Alcoholism
- Leprosy
- Drug addiction
- Elephantitis
- Tertiary Syphilis (must be a laboratory result)

In the past, foreign employees of BOI promoted companies have been exempted from submitting a medical certificate. The medical certificate has to be issued within one month from the application date. Usually, the certificate can be obtained within one day.

→ Thailand

### Immigration – TM30

According to sec. 38 of the Thai Immigration Act, house owners, hotel managers and other persons taking in a foreigner with permission to temporarily stay in Thailand have the duty to report the foreigner to the competent immigration authority. Note that holders of permanent residency are exempted from this reporting requirement.

In the past, at least in Bangkok, sec. 38 has only been enforced against hotels and not against private house owners. However, as of March 2019, immigration has announced that private house owners are obliged to report foreigners, too.

The first registration has to be done in person, subsequent filings can be done online. Immigration has to be notified within 24 hours from

the arrival of the foreigner, unless the arrival date is a Friday. In that case, notification on Monday is permitted.

If a foreigner is registered late, a fine can be imposed. Private house owners will have to pay between THB 800 to 2,000. Hotels can be fined up to THB 10,000.

Please note that registration is also required if a foreigner stays in another province for more than 24 hours. Thus, if a foreigner registered in Bangkok e.g. spends a weekend in Hua Hin, the foreigner has to be re-registered with the immigration in Bangkok within 24 hours upon return.

Though sec. 38 constitutes a duty for house owners etc., and thus does not apply to a foreigner directly, it may cause issues upon extending visas



in Thailand. There have been reports that visa extensions were denied if foreigners could not provide the required documents.

Expats staying on a long-stay visa should discuss the issue with their landlords to ensure compliance with the law to avoid any issues upon extending their visa in Thailand.

→ Thailand

## Economic Development in Thailand

### BANK OF THAILAND

On August 7, for the first time since 2015, the Bank of Thailand cut the interest rate from 1.75 to 1.5 percent. Commentators view the decision as a response to the ongoing appreciation of the Thai Baht against the US Dollar.

### GDP GROWTH IN THAILAND

Several institutes have decreased their forecasts for Thailand's GDP growth in 2019 from an original 3.5 to 4.5 percent to between 3.1 and 3.5 percent. The institutes point to the ongoing trade war between the USA and China and the related economic distress.

### BOARD OF INVESTMENT

On August 14, the Thai Board of Investment announced that the value of received investment applications in the first half of 2019 doubled compared to the same period of 2018. Overall, the BOI received applications with a value of THB 147.2 billion (approx. EUR 4.3 billion). The top three countries were Japan (114 applications), China (81 applications), and Switzerland (10 applications).

### CREDIT OPINION

On July 26, the rating agency Moody's changed its credit opinion for Thailand from stable to positive. The firm pointed to Thailand's diverse economy, transparent fiscal and monetary policies as well as to the strong public and external finances.

→ Thailand

## Proposed Mandatory Travel Insurance

The Office of the Insurance Commission has announced to introduce a mandatory travel insurance for all tourists coming to Thailand. Under the proposed scheme, every tourist will be obliged to pay THB 20 upon entering Thailand. The funds shall be used by the Tourism Promotion Fund to cover accidents and deaths of tourists in Thailand.

The Office of the Insurance Commission announced that the travel insurance will be introduced within 2019. However, the Cabinet has to approve the final plan. It remains to be seen how the proposed scheme will affect the immigration process.

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## → Vietnam

### Import of Used Machinery, Equipment and Technological Lines

On April 19, 2019, the Prime Minister issued Decision 18/2019/QĐ-TTg on the import of used machinery, equipment and technological lines (DECISION 18). With the purpose of preventing Vietnam from becoming a landfill for outdated machinery, Decision 18 limits the amount of used machinery, equipment and technological lines to be imported into Vietnam. Compared to Circular 23/2015/TT – BKHCN dated 13 November 2015, on the import of used machinery, equipment and technological lines, the new Decision provides stricter conditions, standards and procedures of import to be complied with.

#### USED MACHINERY, EQUIPMENT AND TECHNOLOGICAL LINES WHICH ARE ALLOWED TO BE IMPORTED

According to Decision 18, it is only permitted to import used machinery, equipment and technological lines stated in HS Chapter 84 and Chapter 85 of the list of exports and imports from and into Vietnam which are intended for manufacturing purposes in Vietnam, and which are not part of the lists of goods banned from import as compiled by the government, the Prime Minister, the relevant Ministries and ministerial agencies. Consequently, used parts and components as provided in Circular 23 may no longer be imported. Decision 18 further restricts the required purpose of import from “manufacturing and trading” to “manufacturing” only.

Furthermore, used machinery, equipment and technological lines are prohibited for import if they:

1. have been discarded by exporting countries because of obsolescence, poor quality causing environmental pollution; or
2. fail to satisfy requirements of safety, energy consumption, and environmental protection prescribed by the applicable legislation.

#### IMPORT CRITERIA FOR USED TECHNOLOGICAL LINES

Previously, Circular 23 provided the same import criteria for both, used technological lines and used machinery/equipment, focusing on age and on the manufacture complying with National Technical

Regulations (QCVN) or, where inapplicable, be compliant with Vietnam’s Standards (TCVN) or the relevant Standards of the G7 countries. However, Decision 18 differentiates between import criteria for used technological lines and those for used machinery/equipment respectively. Particularly, used technological lines must:

- be manufactured in accordance with either National Technical Regulations (QCVN) or, where inapplicable, comply with Vietnam’s Standards (TCVN) or relevant Standards of the G7 countries or Korea with regard to safety, energy consumption, and environmental protection;
- provide a reasonable remaining capacity, or a performance of at least 85 per cent of its design capacity;
- consume an amount of raw materials or energy that does not exceed 15 per cent of its design consumption level;
- be based on technologies not stated on the list of technologies prohibited or restricted from transferring;
- be based on a technology which is being applied by at least 03 manufacturers of the member countries of the Organization for Economic Cooperation and Development (OECD).

Decision 18 clearly stipulates import criteria for used technological lines to ensure that used technological lines do not have any negative impact on the environment, and in order to eliminate outdated technology. However, the requirement of the technology of the used technological lines being applied by at least 03 manufacturers of OECD member countries may cause some difficulties for the affected companies because there is no further guideline as to which documents are requested in order to meet this requirement.

#### IMPORT CRITERIA FOR USED MACHINERY AND EQUIPMENT

Used machinery/equipment may be imported if they satisfy the following criteria:

- being manufactured either in accordance with National Technical Regulations (QCVN), or,

where inapplicable, in compliance with Vietnam's Standards (TCVN) or relevant Standards of the G7 countries or Korea with regard to safety, energy consumption, and environmental protection;

- their age does not exceed 10 years; in some specific fields such as mechanical engineering, wood production and processing as well as paper and paper pulp production, the age may range from 15 to 20 years.

Please note that the age is calculated from the year of manufacturing to the year of import of the used machinery/equipment. The stipulated maximum age may challenge foreign owned companies that wish to import used machinery/equipment from other countries into Vietnam to establish a manufacturing business in Vietnam. In practice, not all machinery/equipment have been purchased in the manufacturing year, but several years later. Such machinery/equipment though satisfying all other requirements and not detrimentally affecting the environment, may not be imported if their age exceeds the stipulated maximum of 10 years. Despite many experts and companies criticizing this particular provision, claiming it is neither reasonable nor practical, the government insists on the requirements with regard to the maximum age being necessary to protect the environment.

## IMPORT OF USED MACHINERY AND EQUIPMENT IN SPECIAL CASES

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It is thus remarkable, that a company which is currently operating may be allowed to import used machinery/equipment exceeding the above age limit in order to continue its operation, provided that (i) the remaining capacity or performance must reach at least 85 per cent of its design capacity; and (ii) the amount of raw materials or energy consumed does not exceed 15 per cent of its design consumption level. In such case, a company may submit an application to the Ministry of Science and Technology (MOST) requesting consideration and approval. The application must include an explanation on: (i) the necessity of the used machinery/equipment for the maintenance of the current manufacturing and business operations; (ii) the plan for the further use of the used machinery/equipment, and (iii) the indispensability of the used machinery/equipment in the technological line. Decision 18 thus fixed some shortcomings of Circular 23 by clarifying the requested documents and the procedure for an application for approval from MOST.

## OTHER MATTERS RELATED TO IMPORT DOCUMENTS

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Import documents requested for used machinery/equipment:

- Original of the certificate of manufacture about manufacturing year and standards of the used machinery/equipment being compliant with the above mentioned import criteria for used machinery/equipment that has been manufactured in any G7 country or Korea;
- Inspection certificate issued by a designated inspection body for used machinery/equipment that has been manufactured in any G7 country or Korea without certificate of manufacture, or for used machinery/equipment that has been manufactured in a country other than G7 countries and Korea;
- Approval from MOST to import used machinery/equipment exceeding the stipulated age limit.

As to used technological lines, an inspection certificate is requested in all cases.

A list of designated inspection bodies shall be published on the portal of the MOST.

In short, though some issues have not been clarified yet, this Decision does provide some detailed requirements and procedures with regard to the import of used technological lines and used machinery/equipment. It also presents an effort of the Vietnamese government to prohibit outdated, poor quality, polluting and unsafe used machinery/equipment and technological lines from being used in the country. Decision 18 took effect as of June 15, 2019.

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