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COVID-19: MEASURES INTRODUCED IN ASIAN COUNTRIES

新型コロナウイルスの世界的な感染拡大を受け、アジア各国でも出入国の制限や国内の経済活動の自粛が続くなか、各国政府は緊急の経済対策を打ち出しながら経済活動の再開に向けた出口戦略を模索している状況にある。この一連の動きのなかで、各国で事業活動を行う民間企業も契約の不可抗力事由の解釈や、取締役会・株主総会が開催できないといったこれまでになかった様々な法的問題に直面していると思われる。そこで本稿では、インド、インドネシア、マレーシア、ミャンマー、フィリピン、シンガポール、タイ、ベトナムのアジア主要国 8 カ国において、新型コロナウイルスの感染拡大に起因又は関連して生じている重要な法的問題点及び法的留意事項を紹介する。

Introduction

In light of the COVID-19 pandemic outbreak globally, the governments of several Asian countries and key regulators in these jurisdictions have introduced initiatives and measures to keep companies afloat and reduce their compliance burden. These measures range from stimulus packages to temporary protection from winding up of companies and extension of time to lodge statutory documents. This article focuses on the initiatives introduced by the Governments of India, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. The information contained herein is correct as of 10 May 2020.

India

1. Nation-wide lockdown:

In light of the COVID-19 pandemic, the Government of India on 24 March 2020, initially announced a 21 day nationwide lockdown under the *Disaster Management Act, 2005* which included closure of offices with the exception of essential services. This nationwide lockdown has extended until 17 May 2020. From 3 May 2020, however, there has been some easing of restrictions – the country has been divided into three zones and exemptions have been granted zone-wise with green zone having the least restrictions and red zone having the most. All the major metropolitan cities in India, including, New Delhi, Mumbai, Chennai, Hyderabad, Bengaluru and Pune have been notified as red zones.

2. Government's interpretation on COVID-19 as Force Majeure:

The general position under Indian law on whether a party can invoke a *Force Majeure* clause and successfully argue that its contractual obligations were terminated due to frustration, impossibility or impracticality under the *Indian Contract Act, 1872* based on COVID-19 will depend on the court's analysis of the facts of the case and language of the contract. This position was reiterated in a recent judgment of the Bombay High Court dated 8 April 2020, wherein the Bombay High Court while disposing multiple applications for grant of interim relief as a result of the lockdown, decided the applications based on the language of the force majeure clause as well as prevailing circumstances.

Separately, several departments of the Indian government have issued memoranda categorizing COVID-19 as *force majeure*. Notably, the Department of Expenditure (Procurement Policy Division) of the Ministry of Finance issued an office memorandum dated 19 February 2020 stating that the disruption of supply chains due to spread of coronavirus will be covered in the *force majeure* clause of the Department's *Manual for Procurement of Goods, 2017* and that such a clause could be invoked following due procedure. The Ministry of New & Renewable Energy ("MNRE") has also issued an Office Memorandum dated 20 March 2020 directing all renewable energy implementing agencies to treat delay on account of disruption of the supply chains due to COVID-19 as *force majeure* and consequently to grant suitable extensions of time for projects based on evidence or documents produced by developers to substantiate their claims of disruption. On 17 April 2020, the MNRE issued a further memorandum requiring all renewable energy implementing agencies to treat lockdown due to COVID-19 as 'force majeure'. Each of these memoranda are likely to have persuasive value in transactions with the Government as well as in case of private contracts.

3. Changes in Conduct of Legal Proceedings:

The Supreme Court issued an order dated 23 March 2020, extending the limitation period in all legal proceedings including in all petitions, applications, suits and appeals, under general and special laws, whether condonable or not, with effect from 15 March 2020 till further order/s are passed by the Court. The Supreme Court's order is binding on all courts/tribunals and authorities.

Further, all courts and tribunals have adjourned cases and are hearing only urgent cases. The Supreme Court issued an order dated 6 April 2020, wherein the Court stated guidelines for video conferencing to be followed by courts during the COVID-19 lockdown. Most courts including tribunals such as National Company Law Tribunals ("NCLT") and National Company Law Appellate Tribunal ("NCLAT") have adjourned cases and are hearing only urgent cases.

4. Changes in the Insolvency and Bankruptcy Code, 2016 ("IBC"):

The Ministry of Corporate Affairs ("MCA") issued a notification dated 24 March 2020, which increased the *de-minimis* amount for filing an application to initiate corporate insolvency resolution process of a corporate debtor from INR 100,000 to INR 10,000,000. Further the *IBBI (Insolvency Resolution Process for Corporate Persons) Regulations (CIRP Regulations) as well as the IBBI (Liquidation Process) Regulations* have been amended as of 29 March 2020 to provide that the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak will not be included for the purpose of the time-line for any activity that could not be completed due to the lockdown, in relation to a corporate insolvency resolution process as well as the liquidation process. The timelines under CIRP Regulations for filing various forms by the insolvency professional/interim resolution professional/resolution professional (as the case may be) has been extended to 30 October 2020.

5. Moratorium granted by the Reserve Bank of India:

The Reserve Bank of India ("RBI") had on 27 March 2020, issued a notification titled COVID-19 Regulatory Package. Pursuant to the notification, the RBI has permitted all lending institutions (commercial banks, co-operative banks and non-banking financial companies) to grant a three-month moratorium on payment of all installments falling due between 1 March 2020 to 31 May 2020.

6. Corporate compliance relaxations by MCA and SEBI:

MCA issued a notification dated 18 March 2020 for providing relaxation in holding board meetings with physical presence of directors and allowing such meetings to be held through video conferencing or other audio-visual means until 30 June 2020. On 24 March 2020, MCA issued a circular, providing further relief measures to reduce the compliance burden on companies to enable them to focus on taking measures to address the COVID-19 threat,

in particular, the MCA has clarified that for the financial year 2019-20, non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, shall not be treated as a violation.

Separately, the Securities and Exchange Board of India (“SEBI”) has issued relaxations through several circulars granting extension of time to listed companies to conduct meetings and make filings with the SEBI.

7. Measures to curb opportunistic takeovers/acquisitions amid COVID -19:

On 17 April 2020, the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry issued a press note pursuant to which the extant Foreign Direct Investment (FDI) policy has been amended such that an entity or citizen of a country, which shares a land border with India (i.e. Bangladesh, Pakistan, China, Nepal, Myanmar, Bhutan and Afghanistan) can invest in India only with the prior approval of the Government. Further, in case the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, results in the beneficial ownership of an entity or citizen of a neighboring country, such change in beneficial ownership will also require government approval. The *Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020* have been amended to reflect the aforesaid revisions made in the FDI Policy.

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Indonesia

State of Emergency Declared by the Government

As COVID-19 continues its spread throughout Indonesia, the government declared a state of emergency by issuing the Presidential Decision No. 12 of 2020 dated 13 April 2020. This Decision is further regulated under the Decision of Head of the National Disaster Mitigation Agency No. 13A of 2020 stating that the state of emergency lasts until 29 May 2020. With the determination of state of emergency, the government has issued several regulations to control the COVID-19 outbreak and to maintain the stability of economic sector during the pandemic, including but not limited to the regulations related to travel restriction, large-scale social restriction, and trading activities.

In terms of travel restriction, the government through the Regulation of Ministry of Law and Human Rights No. 11 of 2020 prohibits foreigners to visit Indonesia until the status of pandemic is revoked. However, this prohibition does not apply for foreigners holding limited stay permit, permanent stay permit, diplomatic or service visa, doctors and paramedics who are requested to assist the treatment of COVID-19 victims in Indonesia, cabin crew, and foreigners working in government strategic project. In addition to travel restriction for foreigners, the Ministry of Transportation decided to shut down all domestic flights from 25 April 2020 until 1 June 2020.

The government also introduced the concept of “large-scale social restriction”. During this period, all schools and non-essential businesses must be closed. The implementation of large-scale social restriction may only be done through the approval from the Minister of Health upon the application submitted by the Governor/Major/Regent. So far, almost major business cities in Indonesia, such as Jakarta, Bekasi, Tangerang, Bandung and Surabaya, have

implemented the large-scale social restriction. As such, most of companies have implemented “working from home” policy to all employees. Moreover, due to incoming *Hari Raya* (Muslim religious festival) by the end of May 2020, the Government prohibits people to return to their hometown as the customary way to celebrate it.

For trading activities, the Ministry of Trade determined the temporary ban on imports of live animals from China. Furthermore, all exports of antiseptics, personal protective equipment, raw materials utilized to produce masks, and masks are also prohibited.

COVID-19 Pandemic as the Reason to Apply Force Majeure

There is no overarching definition of force majeure. However, the concept of force majeure is reflected in Article 1244 and Article 1245 of the Indonesian Civil Code (“**ICC**”) which essentially regulates that the debtor may not be responsible to perform his obligations if there are unforeseeable events that prevent him to perform the obligations. Articles 1244 and 1245 are regulated in Book III of the ICC. This book is “open” in nature, which means everyone is free to determine specific technical matters, as long as they are not contrary with the prevailing laws and regulations.

Practically, the parties in the agreement will determine what events constitute force majeure, such as: fire, flood, pandemics, riots, change of laws, etc. As such, whether or not an event is considered as force majeure will depend on the contract between the parties.

The determination of COVID-19 as force majeure event depends on whether or not “epidemic”, “pandemic”, “lock down”, or other related events are included in the agreement. Therefore, even though that the government has decided the state of emergency due to COVID-19 pandemic, such government decision may not be automatically applied as the grounds of force majeure if the specific events are not stipulated in the agreement.

Moreover, it should be taken into account that the suspension or non-performance of obligations due to COVID-19 are limited to the obligations that are directly affected by force majeure event. For example: if you are obliged to produce certain products within certain period of time but due to COVID-19 your employees cannot work in the office, then you may apply force majeure for the delayed of production. On the other hand, if it is related to payment obligations, it is unlikely that force majeure can be a defense of non-payment because there are alternative methods to pay, such as: internet banking, etc. Thus, to apply force majeure clause, it will have to be evaluated on case-by-case basis based on the obligations that have to be performed under the contract.

Reliefs by the Government

Some of government institutions have introduced reliefs due to COVID-19 pandemic. Directorate General of Tax provides incentives for taxpayers affected by COVID-19 pandemic, provided that they satisfy certain criteria stipulated under the Regulation of Minister of Finance No. 23/PMK.03/2020. Through this incentive, the income tax of taxpayers who meet the criteria will be borne by the government.

The Indonesian Financial Service Authority (“**OJK**”) issued several regulations due to COVID-19 pandemic, among others the extension of submission of periodical reporting obligations for financial institutions and arrangement of general meeting of shareholders of public companies through video conference.

Lastly, in terms of dispute resolution, the Supreme Court, General Attorney, and Ministry of Law and Human Rights have entered into a cooperation agreement to enable the court proceeding to be conducted through video conference. This policy is also adopted by the Indonesian Anti-Monopoly Supervisory Commission (“**KPPU**”) to settle the case electronically.

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Malaysia

1. Corporate Tax Adjustments

- Companies will be allowed to revise their tax estimates earlier (i.e. in the third month of the instalment payment schedule, if the third month falls in 2020);
- Capital expenditure on machinery and equipment including ICT equipment incurred from March 1st, 2020 to December 31st, 2020 will be granted an accelerated capital allowance with initial allowance at 20% and annual allowance at 40% i.e. fully claimable in two (2) years;
- Businesses that incur qualifying expenditure on renovation and refurbishment of its business premises from March 1st, 2020 to December 31st, 2020 shall be given tax deduction up to RM300, 000.

2. Loans and Business Funding

- All banks are required to provide financial relief in the form of payment moratorium comprising restructuring and rescheduling loans for affected businesses and individuals for 6 months

3. Employment Support

- Tiered wage subsidies for three (3) months for all companies with local employees earning a monthly salary each of RM4,000 and below: RM600 per month per worker for companies with less than 200 workers (claimable up to 200 employees); RM800.00 per month per worker for companies with 76-200 workers; RM1,200 per month per worker for companies with 75 or less workers;
- Foreign worker levy reduction by 25% to all companies with work permits that will expire in the period of April 1st to December 31st, 2020;

4. Moratorium of 30 days after MCO to Lodge Statutory Documents

- Companies Commission of Malaysia (“CCM”) has granted a moratorium of 30 days from the end of the Movement Control Order (“MCO”) to lodge all affected statutory documents.
- Within this 30 day moratorium, late lodgment fees are exempted.

5. 3 Months’ Extension for Lodging of Financial Statements

- CCM has granted an extension of time of 3 months from the date the companies had to lodge their financial statements. An application for the extension of time must still be made and sent by e-mail before June 30th, 2020 to be eligible.
- CMM will waive the application fee of RM100 for the extension of time.

6. Temporary Winding Up Protection

- The most common method of winding up a company is through the issuance of a statutory demand under Section 466(1)(a) of the Companies Act 2016 (“CA”) based on the prescribed amount by the Minister, which was RM10,000 (“Prescribed Amount”). The debtor company then has 21 days to respond to the statutory demand after which the creditor can file a winding up petition (“Response Time”).

- The Minister had issued a direction under Section 466(1) (a) of the CA to increase the amount of the Prescribed Amount to RM50, 000. This means that a company shall now be deemed to be unable to pay its debts if the company is indebted in a sum that exceeds RM50, 000 and a creditor has served it with a notice of demand, which the company fails to pay within the Response Time.
- Based on the Companies (Exemption) (No. 2) Order 2020, the Minister had changed the Response Time from 21 days to six months for any statutory demand served within the period from April 23rd 2020 to December 31st, 2020, and thus the debtor company now will be given six months to respond to the statutory demand. This gives significant breathing space to companies.

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Myanmar

Myanmar Government has issued several notifications and directives to provide relief measures to businesses in response to the economic impact of COVID-19 in the country. The below outlines a summary of the recent relief measures introduced by the Myanmar Government:

Reduction of interest rates by the Central Bank of Myanmar

The Central Bank of Myanmar (the “**CBM**”) cut the interest rates three time within two months in order to prevent an economic collapse as a result of the COVID-19 outbreak. The CBM issued Directive 8/2020 (“**Directive 8**”) on 27 April 2020 to amend Directive 1/2020 (“**Directive 1**”) and Directive 4/2020 (“**Directive 4**”) issued by the CBM on 12 March 2020 and 24 March 2020 respectively and amended the annual interest rates, minimum bank deposit rates and maximum lending rates on collateralized loans.

CBM lowered the annual interest rates 1.5% under Directive 1 and the Directive 4. The minimum bank deposit rate for savings deposits, saving certificates and time deposits was reduced by 3% from 9.5% to 6.5%. Directive 1 and Directive 4 also reduced the maximum interest rates on collateralized and non-collateralized loans to 11.5% and 14.5% respectively.

Additionally, Directive 8 of the CBM further reduced the interest rates (except the maximum lending rates for loans without collateral) by 1.5%. The date of enforcement of the interest rates under Directive 8 is set for 1 March 2020. The present interest rates, as against the previous rates (prior to the issuance of Directive 1 and Directive 4) are set out below:

Particulars	Previous Rate	New Rate
Annual Interest Rate	10%	7%
Minimum bank deposit rate for savings deposits, savings certificates and time deposits	9.5%	5%

Maximum lending rate (including all charges) for loans on collateral	13%	10%
Maximum lending rate (including all charges) for loans on non-collateral	16%	14.5%

Social Security Relief as provided by the Ministry of Labor, Immigration, and Population

On 20 March 2020, the Ministry of Labor, Immigration, and Population (the “**MOLIP**”) published Directive 1/2020 relating to “Guidelines and compliance requirements to be followed by employers, employees in workplaces or organizations that are shut down due to COVID-19”. The said Directive allows entities registered with Social Security Board to suspend payment of Social Security Contributions to the Social Security Board if they inform a temporary closure and cutting back on employees due to various reasons related to the COVID-19 outbreak. It is noted that the Social Security Board will conduct a site visit, in order to conduct onsite inspection and suspend contribution. If the work organization re-opens the operations, the employers will have to inform the Social Security Board and resume paying contributions within 10 days.

Further, MOLIP issued Notification 64/2020 on 20 March 2020, allowing employees (whether temporary or permanent) who became unemployed due to closure of the workplace to continue enjoying the benefits under Social Security Law 2012, as if they remained employed.

Subsequently, the MOLIP issued Notification 63/2020 on 20 March 2020 to extend the deadline of payment of social security contributions (for both employer and employee contribution) from 15 days after the end of the month to 3 months after the end of the month. Affected employers should notify their social security office that payments will be delayed. This applies to all the business which are registered with the Social Security Board under the Social Security Law 2012 and is effective from 20 March 2020.

Regulation over essential supplies and exemption of the import license fees by the Ministry of Commerce

Ministry of Commerce (the “**MOC**”) has been conferred power to classify goods as essential supplies under the Essential Supplies and Service Law 2012 (the “**ESL 2012**”). The MOC issued the notification 21/2020 (the “**Notification 21**”) on 30 March 2020 titled “The prohibition of price increases and hoarding of Essential Supplies”. The notification 21 classifies the following as “Essential Supplies”: (i) goods and supplies relating to the prevention, control and treatment of COVID-19; (ii) medicines; and (iii) food products.

The Notification 21 prohibits the increase of sales prices and distribution prices and the hoarding to such supplies with the intention of market manipulation. As per Section 5 of the ESL 2012, any person who violates the above prohibition shall, on conviction, be liable to imprisonment for a minimum period of 6 months and a maximum of 3 years, as well as a fine not exceeding 500, 000 Kyats.

Under Notification 22/2020 issued by the MOC on 31 March 2020, the Department of Consumer Affairs is tasked with the enforcement of above prohibition.

Furthermore, MOC issued the Notification 27/2017 on 11 April 2020 which granted an exemption of all import license fees for medicines and raw materials used for medicine.

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Circuit Breaker: The Singapore government has introduced a number of public health measures in an effort to curb the transmission of COVID-19. These measures include the implementation of a “circuit-breaker” period, which entails a wide range of restrictions on social interactions and ordinary business operations. As of the date of this article, the circuit-breaker period will remain in force until 1 June 2020.

Contractual Obligations

The COVID-19 (Temporary Measures) Act 2020 (“Act”) was passed into law on 7 April 2020. The Act provides temporary relief for Scheduled Contracts by imposing a moratorium on certain legal actions that may be taken against a party for its inability to perform a Scheduled Contract where such inability was to a material extent caused by a COVID-19 event.

The list of Scheduled Contracts set out in the Act comprises:

- (1) loan contracts by licensed banks or finance companies to an enterprise (with a turnover of less than SGD 100 million that is at least 30% owned by Singapore citizens or permanent residents) secured against any commercial or industrial immovable property or any plant, machinery or fixed asset located in Singapore;
- (2) leases or licences of a non-residential immovable property;
- (3) construction or supply contracts;
- (4) performance bonds or equivalent granted pursuant to a construction or supply contract;
- (5) tourism-related contracts;
- (6) events contracts; and
- (7) hire-purchase or conditional sale contracts for commercial plants, machinery or fixed assets located in Singapore or commercial vehicles.

The moratorium will remain in force for an initial six-month period from 20 April 2020 to 19 October 2020, and applies to contractual obligations that are to be performed on or after 1 February 2020 and where the relevant contract was entered into before 25 March 2020. During this period of relief, the following actions may not be taken against a protected party: (1) commencing an action in court or domestic arbitration, (2) enforcing security, judgment, domestic arbitral award, or determination, (3) repossessing goods under hire, (4) exercising right of re-entry or termination for non-payment of rent, or (5) commencing insolvency proceedings against the counterparty in breach until the prescribed period expires. The prescribed period of protection may be extended or shortened, depending on how the COVID-19 pandemic develops.

There is no automatic relief granted under the Act. A party that is unable to perform its contractual obligations as a result of a COVID-19 event and intends to seek relief under the Act must serve a notification for relief on the counterparty to the contract and any other person as may be prescribed under the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020. Any disagreement as to the applicability of the Act or the validity of a prohibited action will be adjudicated by the Registrar of Assessors. Further details of the notification requirements can be found at <http://www.mlaw.gov.sg/covid19-relief>.

Force Majeure

Outside of the temporary relief available under the Act, or, if the relevant contract is not a Scheduled Contract, a party which finds itself unable to perform its contractual obligations amid the COVID-19 pandemic may wish to ascertain whether alternative protection is available under the relevant contract. Singapore law governed contracts often include a force majeure clause, which relieves a party from performing its contractual obligations upon the occurrence of a supervening event (i.e. an event which has occurred through no fault of either party). Common examples of

supervening events include government-imposed regulations, trade restrictions, labour strikes, natural calamities, and war.

Whether the COVID-19 pandemic triggers the *force majeure* clause, however, would depend on factors including the specific wording of the clause. Arguably, force majeure clauses which contain express references to “*pandemics*”, “*epidemics*” or public health crises can be invoked with more certainty compared to more ambiguous terms such as “*act of God*”, which has traditionally been used to refer to natural calamities. On the other hand, some *force majeure* clauses focus less on naming a specific event that would constitute *force majeure*, but instead on the impact the supervening event has had on a party’s ability to perform the contract.

Temporary Relief for Financially Distressed Persons

The Act also provides temporary relief for distressed persons by increasing the thresholds for bankruptcy and insolvency for individuals and businesses in financial distress. During the initial period of the moratorium prescribed by the Act (i.e. 20 April 2020 to 19 October 2020), winding up proceedings can only be commenced against a company debtor if it cannot satisfy its debt within 6 months of being served with a statutory demand for over SGD 100,000.

Alternative Arrangements for Meetings

On 13 April 2020, the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 (“**Order**”) was published and deemed to have come into force with retroactive effect from 27 March 2020. The Order allows for meetings required under the law for the aforementioned entities to be conducted electronically, as opposed to in-person meetings, for the period from 27 March 2020 to 30 September 2020. Meetings conducted by electronic means must fulfill certain requirements set out in the respective schedules, such as providing both audio and audio-visual broadcast, providing an avenue for taking votes and questions from attendees, and giving sufficient notice with all required information and documents.

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1. **Measures concerning the business operation and business promotion incentives**

1.1 **Measures issued by the Department of Business Development, Ministry of Commerce (the “DBD”)**

- (i) Measures to relieve from statutory annual meeting requirements
 - Relaxation on deadline to hold the mandatory annual general meeting of shareholders (the “AGM”). The company’s AGM can be flexibly held later after the four-month deadline under the laws. However, it is required to submit the explanation letter stating the reason for delay in relation to the impact of COVID-19.
 - The audited financial statements can also be submitted later to the DBD within 1 month after the date of AGM.
- (ii) Measures to ease restrictions on electronics meeting
 - Royal Decree on Teleconferences through Electronic Means of 2020 effective from 19 April 2020 allows the board meetings and the shareholder meetings to take place entirely via electronic means without the requirement of the physical presence in Thailand and the number of attendees as previously applied.

1.2 **Measures issued by the Board of Investment of Thailand (the “BOI”)**

- (i) Measure under the Announcement of the BOI No. 3/2563 (2020) re Investment Stipulation Measures
 - A reduction of 50% of corporate income tax (the “CIT”) for additional 5 years as from the date the CIT exemption expires for the projects that are entitled to the CIT exemption for not over 8 years, on the condition that the projects, to be operated in all provinces in Thailand which are declared the investment promotion zone, shall have the actual investment capital (excluding land cost and working capital) (i) not less than 500 million baht from 6 February 2020 to 30 December 2020; or (ii) not less than 1,000 million baht from 6 February 2020 to 30 December 2021.
- (ii) Measures to promote investments in medical sector
 - A reduction of 50% of CIT for additional 3 years apart from 3 to 8 year tax holidays for the project that applies for promotion between 1 January and 30 June 2020, provided that 50% of the medical tools manufactured shall be distributed or donated in Thailand in 2020-2021.
 - Support to adjust the existing production lines to manufacture medical devices or parts by exempting import duties on machinery provided that the machinery is imported within 2020 and the application to adjust the production line is filed by September 2020.
 - Pharmaceutical grade alcohol production can now be entitled to a 8-year CIT exemption.
 - Production of non-woven fabric used for the production of medical masks is now entitled to a 5-year CIT exemption.
- (iii) Measures to relax certain investment conditions for promoted projects
 - The deadline to import duty-free machinery and notify the commencement of operation is extended for 6 months from the actual deadline.
 - Temporary waiver of applications for temporary cessations of operations is granted for a period of more than 2 months by submitting the online notification via BOI system.
- (iv) Measures to facilitate the existing BOI promoted projects
 - Encouragement of more online document filing, also extending the deadline of filing requirement.
 - Launch of a new online document submission service (e-Submission) system for BOI applicants and promoted businesses to submit of documents which cannot be submitted through the existing e-Services filing system.
 - Extension of the CIT exemption approval for the fiscal year 2019 up to 31 July 2020.

2. **Measures concerning tax**

2.1 **Measures issued by the Revenue Department**

- (i) Measures on reduction of withholding tax
 - The withholding tax rates for service fees, the hire of work, services, commissions, and professional fees will be reduced from 3% to 1.5% for the payments made from 1 April 2020 to 30 September 2020. This benefit is granted to both individuals and companies. In case of payment via electronic means, the rate will subsequently be reduced to -2% from 1 October 2020 to 31 December 2021.
- (ii) Faster VAT refunds for good exporters
 - The VAT registrants that are limited companies or public limited companies and registered as good exporters will obtain faster VAT refunds within 15 days if the filing is made by electronic means and within 45 days if the filing is made physically.
- (iii) Filing deadline extension
 - The filing deadline of CIT return form (PND.50) is extended from 1 April to 30 August 2020 to 31 August 2020 and half year CIT return form (PND.51) from 1 July to 29 September 2020 to 30 September 2020.
- (iv) Tax deduction for donations to government fund
 - Individuals, companies and registered partnerships can claim a tax deduction for donations made via e-Donation to the approved government fund to combat COVID-19 during the period from 5 March 2020 to 5 March 2021.

3. Measures concerning employment by the Social Security Office, Ministry of Labor

- (i) Reduction in the Social Security Fund (the “SSF”) contribution rate
 - The SSF contributions will be temporarily reduced from 5% to 1% for employees and from 5% to 4% for employers from March to May 2020.
 - The deadline to pay monthly contributions in March, April, and May 2020 has been extended for three months. Thus, the deadline for social security forms due for March, April, and May 2020 is extended to 15 July, 15 August, and 15 September 2020 consecutively.
- (ii) Compensatory benefits in the event of unemployment during COVID-19
 - In case of termination by the employer, the employee is entitled to receive compensation at the rate of 70% of daily wages up to the maximum of 200 days.
 - In case of resignation, the employee is entitled to receive compensation at the rate of 45% of daily wages up to the maximum of 90 days.

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1. Community Quarantines

On March 16, 2020, the President of the Philippines issued Proclamation No. 929 declaring a state of calamity throughout the Philippines due to the COVID-19 pandemic, and imposing an enhanced community quarantine (“**ECQ**”) throughout Luzon (which includes the National Capital Region) beginning March 17, 2020 until April 30, 2020. Local governments in other areas in Philippines have also placed their respective provinces, cities or municipalities under ECQ, following such measures. Shortly thereafter, Republic Act No. 11469 or the Bayanihan to Heal as One Act was passed into law on March 24, 2020 declaring the existence of national emergency arising from the COVID-19 disease, and granting the Philippine President temporary emergency powers to adopt certain measures in order to respond to the crisis brought about by the pandemic.

On April 30, 2020, Executive Order No. 112 was issued extending the original ECQ period until May 15, 2020 for certain high risk geographic areas, including the National Capital Region, while for other low risk geographic areas, the ECQ has been eased and transitioned to a general community quarantine (“**GCQ**”) effective May 1, 2020¹, on the condition that minimum health standards continue to be achieved. For the period from May 16, 2020 and onwards, decisions to impose, lift or extend a community quarantine, including reverting from GCQ to ECQ or adopting a modified one as the situation warrants will thereafter rest with the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (“**IATF**”), subject to the recommendation of local government leaders.

With the quarantine status of various local government units in the Philippines changing from time to time, the list of businesses allowed to operate under such measures may also differ or be amended, and will therefore need to be regularly monitored. Notwithstanding, businesses resuming operations will be required to comply with the Interim Guidelines on Workplace Prevention and Control of COVID-19 jointly issued by the Department of Trade and Industry and the Department of Labor and Employment on April 30, 2020, as may be amended, during the ECQ and GCQ period.

2. Grace period for payment of loans

Under IATF Resolution No. 33, all lenders, including but not limited to banks, quasi-banks, non-stock savings and loan association, credit card issuers, pawnshops and other credit granting financial institutions under the supervision of the Bangko Sentral ng Pilipinas and Securities and Exchange Commission (“**SEC**”), among others (collectively, “**Covered Institutions**”) have been directed to implement a minimum 30 day grace period from due date or until such time the community quarantine is lifted, for all types of loans with principal and/or interest falling due within the ECQ or GCQ period without incurring interest, penalties, fees and other charges.

The accrued interest for the grace period may be paid by the borrower on a staggered basis over the remaining life of the loan. Covered Institutions are prohibited from requiring clients to waive such grace period, and no waiver previously extended shall be valid. Nonetheless, borrowers may still choose to pay their obligations as they fall due during the period.

3. Grace period for commercial rent payments

Guidelines were likewise issued for the implementation of a minimum 30 day grace period from the payment of residential rent during the ECQ period, and commercial rent where lessees are micro, small and medium

¹ Under a GCQ, certain business activities and establishments located in such areas are allowed to resume operations at up to 50% operational capacity, or 50% work-on-site arrangement, work from home and other alternative work arrangement. See the IATF Omnibus Guidelines on Community Quarantine dated April 29, 2020, as amended by IATF Resolution No. 30-A dated May 1, 2020, among others.

enterprises which temporarily ceased operations during the ECQ period or are still not permitted to operate during the GCQ period. Cumulative amounts of rent falling due within such periods shall be equally amortized in the next 6 months following the end of the ECQ or GCQ, as the case may be, and shall be added to rents due on those succeeding months without interest, penalties, fees and charges.

While lessors are not obligated to refund the rents paid by lessees during such period, they are required to grant the grace period on the next due date of the rent falling within such period. Lessors who wish to extend greater generosity may further waive rents falling due within such period, grant reprieve or renegotiate lease term arrangements. No eviction shall be enforced for failure to pay the rent due within 30 days after the lifting of the ECQ or GCQ, as the case may be.

4. Deferment or exemption from paying holiday pay

Employers are allowed to defer the payment of holiday pay to its employees who have continued to work during the ECQ period, until the situation has abated and normal operations of the establishment is in place. On the other hand, for establishments that have totally closed or ceased operations during the ECQ period, employers are exempted from paying their employees holiday pay.

5. Extension of periods to file corporate reports and pay taxes

Generally, government agencies have either extended deadlines for filing of required reports, or allowed for alternative means for establishments to substantially comply with reporting requirements. Moreover, proceedings pending before other government agencies such as the merger filing periods of the Philippine Competition Commission have also been considered interrupted or suspended during ECQ.

a. Corporate filings

As to corporate filings, the SEC has issued guidelines allowing for reports to be filed through email, registered or ordinary mail with electronic signatures. Hardcopies of such reports are to be submitted to the SEC within 10 to 30 days after lifting of the ECQ, depending on the type of report. Further, reports originally requiring notarization may be submitted unnotarized during the ECQ. In the case of publicly listed companies, certain reports disclosed through the Philippine Stock Exchange EDGE will be considered as having been filed with the SEC.

b. Tax payments and filings

With some areas in the Philippines still under ECQ, the Bureau of Internal Revenue has further pushed back the deadline for the filing and payment of all types of national taxes. Annual income tax returns which are statutorily due on April 15, 2020 for corporations adopting a fiscal year ending on December 31st, are now due on June 14, 2020, without penalties. The adjusted deadlines for filing and payment of specific national taxes are indicated in Revenue Regulation No. 11-2020 issued on April 30, 2020 as of the date of this article.

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On April 1, 2020 the Prime Minister of Vietnam had declared COVID-19 as a national epidemic under Decision 447/QĐ-TTg.

1. Deferral payment of taxes and land rental fees

The Government issued Decree 41/2020/ND-CP on April 8, 2020 to extend the deadlines for the payments of taxes and land rental fees by enterprises, households, and individuals doing business in certain sectors¹. In particular:

- (i) *For enterprises:* the deadlines for the payment of Value-Added Tax (VAT)² arising in the first and second quarters of 2020; and the deadline for the payment of Corporate Income Tax (CIT) arising in 2019, the first and second quarters of 2020 will be extended for five months.
- (ii) *For individuals and business households:* the deadlines for the payment of VAT and Personal Income Tax (PIT) arising in 2020 will be extended to December 31, 2020.
- (iii) *Land rent:* The deadline for the payment of land rent payable under a land lease agreement signed with the state will be extended for five months.

2. Labor matters

In his Directive 11/CT-TTg dated March 4, 2020, the Prime Minister requested the Vietnam Social Insurance to temporarily suspend the collection of the social insurance premium until the end of June or December 2020 depending on the actual situation of enterprises.

Besides, the Ministry of Labors, Invalids, and Social Affairs (“MOLISA”) also issued an official letter guiding enterprises to deal with arising labor issues. Accordingly, an enterprise affected by COVID-19 may refer to the relevant provisions of the Labor Code to deal with its actual situation. In particular, an enterprise and its employee may negotiate to determine the salary during the work suspension period provided that it is not less than the minimum salary stipulated by the Government, or to temporarily suspend the labor contract.

Regarding the foreign labors, the Government requested the MOLISA to temporarily suspend the issuance of new work permits to foreigners who come from areas most affected by the COVID-19 outbreak.

3. Online administrative procedures

In order to minimize in person-contact, and to save time and costs arising from administrative procedures, the Government has issued Decree 45/2020/ND-CP on the implementation of administrative procedures on the electronic platform. Accordingly, organizations and individuals are allowed to conduct administrative procedures online. The administrative procedures conducted online have the same legal validity as other forms. The online procedures must not ask/demand/require users to re-submit the information or data that State agencies are managing or capable of sharing. Currently, the enterprises have been already permitted to conduct the majority of their filings (e.g. tax declaration, financial statements) online. It is expected that the number of administrative procedures that an enterprise may be able to do online will increase in the future.

¹ Those sectors includes, among others, agroforestry fishery, food processing, mechanical processing, furniture, construction, transportation, education and training, real estate, labor and employment services, travel agents, tour operators, entertainment activities, banking. Decree 41/2020/ND-CP also covers small and medium enterprises.

² Excluding the VAT applicable on imported and exported goods

4. **Force majeure, substantial change of circumstances**

According to Article 156 of the Civil Code, the following conditions must be satisfied to constitute an event of force majeure: (i) event occurs in an objective manner; (ii) is not able to be foreseen; and (iii) is not able to be remedied although all possible necessary and admissible measures have been taken. Under Article 351.2 of the Civil Code, a defaulting party is not liable to the defaulted party in the event of force majeure.

Meanwhile, under Article 420 of the Civil Code, when the circumstances change substantially in accordance with specific requirements of law, such as due to objective reasons after the conclusion of the contract, and such change can result in serious damage to one party, the affected party may request the other party to re-negotiate the contract, or request the court to amend or terminate the contract.

In light of the foregoing provisions of the Civil Code, it would be easier to claim that COVID-19 causes substantial change of circumstances than to claim that COVID-19 provokes an event of force majeure because it would be difficult to prove that the affected party has taken all possible necessary and admissible measures. However, specific guidance or opinions from the judicial agencies is awaited in this regard and unfortunately, so far, neither the Ministry of Justice nor the Supreme Court have issued any opinion on this subject matter.

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Conclusion

The situation globally is constantly evolving and governments are closely monitoring the developments in relation to the COVID-19 pandemic and taking steps to swiftly enact legislation and regulations in response. The information contained in this article is correct as of 10 May 2020 and it would be prudent to remain vigilant of any changes and updates to the relevant measures. Please feel free to reach out to us in case you require any further information or clarification.

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