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**This issue covers the following topics:**



Thailand

## NEW GUIDELINE ON ONLINE FOOD DELIVERY SERVICES

本ニューズレター9 月号（No.27）で、取引競争委員会によるオンラインフードデリバリーサービス事業者に対する新規制の草案を紹介したが、11 月 23 日付で当該規制が官報に掲載され、12 月 23 日から適用されることとなった。本稿では、当該規制の概要、事業者の義務及び責任、レストラン事業者の権利等について解説する。

### Background

In recent years, the online food delivery service business in Thailand has grown rapidly. Nowadays, it is a new normal to see many riders on the street of Bangkok and major cities of Thailand wearing a variety of jacket colors for the delivery of food orders from restaurants to customers. Due to high consumer demand of food delivery, many restaurants including the street vendors have struggled to be partners with the online food delivery service providers which currently have only a few players in the market and may result in setting unfair conditions by those powerful online food delivery service providers.

Therefore, in our previous article "Draft Guidelines on Online Food Delivery Services" published in NO&T Asia Legal Review No. 27 in September 2020, we provided an update of an attempt of the Trade Competition Commission of Thailand ("**TCC**") to regulate the unfair acts by the online food delivery service providers against the restaurants. Now, Thailand has finally published the guideline in the Government Royal Gazette on 23 November 2020, namely the Notification of TCC Re: Guidelines on Unfair Trade Practices between Online Food Delivery Service Providers and the Restaurant Business Operators (the "**Guideline**"). This Guideline will come into force on 23 December 2020.

### The Guideline

In this article, we will summarize the basic principle of the Guideline, duties and liability of the online food delivery service providers, rights of the restaurant business operators, as well as legal consequences thereof.

**1. Who is subject to the Guideline?**

The Guideline applies to the food delivery service made through "Digital Platform[1]" between "Online Food

1 "Digital Platform" means the online business which creates the commercial connection between Restaurant Business Operators, food deliver mans and customers (Clause 2 of the Guideline).

Delivery Service Provider" and "Restaurant Business Operator" who fall within the following definitions under Clause 2 of the Guideline:

- "*Online Food Delivery Service Provider*" means a business operator who provides the Digital Platform for being an intermediate of receipt and delivery of food orders between the Restaurant Business Operator, food deliveryman and customer or between the Restaurant Business Operator and the customer.

- "*Restaurant Business Operator*" means a business operator who sells, or makes the food for sale via distribution channel on the Digital Platform.

**2. What is the principle of the Guideline?**

The Online Food Delivery Service Provider shall not undertake any conduct resulting in damage to the Restaurant Business Operator (please see details in Clause 3 below). Any trade terms between the Online Food Delivery Service Provider and the Restaurant Business Operator in relation to the online food delivery service must be agreed in writing in advance under the principles of free and fair trade, non-mandatory, non-discriminatory, clear threshold and reasonable business practices.

**3. What are the prohibited acts of the Online Food Delivery Service Provider?**

Under Clause 4 of the Guideline, the following acts of the Online Food Delivery Service Provider are deemed causing damage to the Restaurant Business Operator which are prohibited under Section 57 of the Trade Competition Act of 2017 ("**TCA**"):

3.1 Unfair fees and charges

Any demands for unfair expenses, compensation, or other benefits from the Restaurant Business Operator are not allowed e.g..

- Unreasonably high commission fee or gross profit exceeding the agreed terms or charging different rate of commission fee towards certain Restaurant Business Operator based on the same quantity, sale value, cost, number of branch and quality etc.;

- Unreasonable advertising fee;

- Unreasonable marketing fee; and/or

- Unreasonably demanding for additional expenses, compensations or other benefits which have never been collected in the past.

If there is any change of expenses, compensations or other amount, the Online Food Delivery Service Provider shall be required to provide a prior notice with reason and necessity for the change thereof.

As the Guideline does not set any price ceiling for any charges, it remains unclear on how TCC will interpret what constitutes unreasonably high charge. Thus, more clarity would be required from the TCC for effective enforcement.

3.2 Setting unfair trading conditions that restrict or prevent the business operation of other persons

Any unfair trading conditions that restrict or prevent the Restaurant Business Operator to operate the business are not allowed e.g., an exclusive dealing where a Restaurant Business Operator is unreasonably prohibited to sell foods via the competitor's digital platform.

3.3 Utilizing unfair superior market power or superior bargaining power

Any utilizing of unfair superior market power or superior bargaining power against the Restaurant Business Operator is not allowed e.g.,

- Unreasonable intervention by the Online Food Delivery Service Provider in relation to the freedom in pricing by the Restaurant Business Operator;

- Rate parity clause e.g., the Restaurant Business Operator is unreasonably forced to set the same food prices for all distribution channels without alternative pricing options;

- Delayed credit term e.g., the Restaurant Business Operator has to wait for a long period of time before the food order money is transferred into their account after the sale;

- Termination of the agreement with the Restaurant Business Operator without reasonable ground e.g., refusal to deal with certain Restaurant Business Operators who try to negotiate or complain the trade terms to the government authorities;

- Removal of the Restaurant Business Operator from the distribution channels without reasonable ground or which is not in accordance with the agreement;

- Amendment of terms and conditions or duration of the agreement with the Restaurant Business Operator without reasonable ground; and/or

- Amendment of the duration of the agreement without giving a 60-day notice.

3.4 Other unfair trade practices

Other unfair practice which may cause damage to the Restaurant Business Operator is not allowed e.g., forcing or setting special conditions or preventing or obstructing the business operation of other business operators.

Apart from the above, please note that any cartel price fixing activities found between any Online Food Delivery Service Providers could also possibly be in violation of horizontal cartel among the business operators under the TCA, for example, the Online Food Delivery Service Providers who agree to jointly charge similar commission fee rate and not compete with each other to lower the commission fee against the Restaurant Business Operator on purpose.

**4. Can the Restaurant Business Operator make a claim under the Guideline?**

Once the Guideline comes into force, the Restaurant Business Operator can be assured that they will be better protected and compensated than what had been possible in the past by bringing a claim for compensation against the Online Food Delivery Service Provider to the court. The Consumer Protection Committee, or an association or foundation certified by it, also has power to make claims on behalf of the Restaurant Business Operator. The right to claim for compensation expires after one (1) year from the date on which the Restaurant Business Operator learned of the acts of the Online Food Delivery Service Provider which caused damage to them. However, due to there being no precedent court case, it is still doubtful on what is the criteria and extent of compensation which the Restaurant Business Operator will be given.

**5. What is the penalty under the Guideline?**

In case of failure to comply with the Guideline, TCC has power to order the suspension of the business, require rectification of performance, or prescribe any conditions for the Online Food Delivery Service Provider. Moreover, the Online Food Delivery Service Provider shall be liable to a hefty administrative penalty of a maximum of ten percent (10%) of annual revenue of the year in which it has committed the offence. If the offence is committed in the first year of operation, the fine shall be not more than one million (1,000,000) Baht.

## Conclusion

The Guideline is expected to have significant effect on the trading practices of the online food-delivery sector in Thailand and will ensure fair and legitimate trade amongst the Online Food Delivery Service Providers and the Restaurant Business Operators. Thus, Online Food Delivery Service Providers and/or investors who are interested in entering this business must be fully aware of the trade terms and practices and whether any such terms can constitute

unfair trade practice under the Guideline. As this is the first regulation to impose restriction on food delivery service under the ambit of the TCA, it may be subject to further clarification from TCC which will closely monitor the case of unfair trade practice once the Guideline comes into force. Nevertheless, TCC has opened the desk for business operators to apply for a ruling concerning their trade terms and practices. The fee is fifty thousand (50,000) Baht and the consideration period will take around sixty (60) to ninety (90) days.

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Singapore

## THE APOSTILLE CONVENTION TO TAKE DOMESTIC EFFECT

2020 年 11 月 2 日、シンガポール議会はアポスティーユ法を可決した。アポスティーユとは、「外国公文書の認証を不要とする条約」（1961 年 10 月 5 日ハーグ条約）に基づく付箋（＝アポスティーユ）による外務省の証明のことであるが、2021 年に施行が予定されている同法では、プロセスの合理化を目的として、公文書の認証を外務省からシンガポール法律アカデミー（SAL）に移管することになる。本稿では、同法に基づくシンガポールにおける公文書の認証手続について概説する。

### Introduction

On 2 November 2020, the Singapore Parliament passed the Apostille Bill, which will allow for Singapore's obligations under the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents ("**Apostille Convention**") to take domestic effect. The Apostille Convention facilitates the use of public documents abroad through the use of a simplified one-step process, the apostillisation. The Apostille Act 2020 ("**Act**"), which is expected to come into force in 2021, will also transfer the legalisation function from the Ministry of Foreign Affairs ("**MFA**") to the Singapore Academy of Law ("**SAL**"), in line with the aim of streamlining processes. This article compares the simplified process under the Act with the current procedure for the authentication and legalisation of public documents for recognition outside of Singapore. The latter will remain applicable for countries that are not signatories to the Apostille Convention.

### Difference between Legalisation and Apostillisation

"Legalisation" describes the multi-stage process whereby the signature, seal or stamp on a local public document is certified as authentic by a series of public officials along a "chain", to a point where the ultimate authentication is readily recognised by the foreign State of destination. Legalisation typically ends with a ministry of State A certifying the authenticity of a local public document originating from State A, and the embassy or consular of destination State B recognising the certification by the ministry of State A.

On the other hand, apostillisation is the issuance of an apostille certificate by the relevant authority that certifies that a particular document originates from official sources or authorities of that state.

The Apostille Convention abolishes the requirement of legalisation. Instead, the Contracting Parties designate a Competent Authority to be responsible for issuing apostilles that certify the origin of official documents produced by the Contracting Party. A Contracting Party is obliged to accept apostilles from the Competent Authorities of all other Contracting Parties. The SAL will be designated as Singapore's Competent Authority under the Apostille Convention, and will be responsible for issuing apostilles to certify the origin of public documents issued by Singapore authorities. When the Apostille Convention enters into force for Singapore, bearers of Singapore-issued public documents who require apostilles to be issued for their documents can approach SAL's Authentication, Membership and Stakeholding Services counter at 1 Coleman Street, #08-06, The Adelphi, Singapore 179803. A model apostille certificate can be found in the First Schedule of the Act.

### Consolidation of Apostillisation and Legalisation Functions

The MFA is also expected to transfer the function of legalising outgoing Singapore public documents to SAL pursuant to the Act. As of the date of this publication, SAL has announced on its website that from 20 January 2021, it will handle the legalisation of documents. Thus, bearers of Singapore public documents for use in destination states that are not Contracting Parties to the Apostille Convention can approach SAL for legalisation services as well.

Under Section 14 of the Act, a "Singapore public document" refers to:

(i) a document executed in Singapore falling within one of the following categories:

(A) a document emanating from an authority or official connected with the courts or tribunals of Singapore, including a document emanating from a public prosecutor, a clerk of a court or a process-server;

(B) an administrative document;

(C) a notarial act;

(D) an official certificate that is placed on a document signed by a person in his or her private capacity (for example, an official certificate recording the registration of a document or the fact that the document was in existence on a certain date, or an official or a notarial authentication of a signature); or

(ii) a document (including a document that is not signed, sealed or stamped) that is prescribed to be a Singapore public document.

A "Singapore public document", however, does not include a document executed by a diplomatic or consular agent, or a prescribed private document.

## Streamlining the Process

In Singapore, the Apostille Convention has more impact on the process for authentication and legalisation of non-government documents compared to government documents. This is because the MFA already directly legalises documents issued by the Singapore Government. On the other hand, the MFA only legalises non-government documents after they have been notarised by a Notary Public and authenticated by the SAL. Bearers of non-government documents incur more time and costs in having documents notarised and authenticated before approaching the MFA.

When the Act comes into force in Singapore, bearers of Singapore government documents will still have to undergo the step of obtaining the apostille certificate from SAL, while bearers of Singapore non-government documents can approach SAL for apostillisation immediately after being notarised by a Notary Public. For Singapore public documents that are intended for use in a destination state that is not a Contracting Party to the Apostille Convention, the bearer of such documents will also be able to have the necessary procedures for legalisation completed at SAL in a single location.

## Foreign Public Documents for Use in Singapore

When Singapore becomes a Contracting Party to the Apostille Convention, Singapore authorities would be reciprocally required to accept foreign public documents affixed with apostilles from other Contracting Parties without the need for legalisation. Japan has been a Contracting Party to the Apostille Convention since 1970. To find out whether apostilles from your home country would be accepted in Singapore, please refer to the Status Table of the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents on the website of Hague Conference on Private International Law available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=41.

## Conclusion

The modernisation of the process for authentication of public documents in Singapore for recognition across jurisdictions is a belated but welcomed development as it will enable numerous users to save on time and costs. This further facilitates the ease of both outgoing and incoming business activities.

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Myanmar

## KEY CONSIDERATION ON EMPLOYMENT IN MYANMAR DURING COVID-19

新型コロナインフルエンザの感染拡大に伴い、ミャンマーにおいても政府が様々な施策を打ち出している。本稿では、かかる政府の施策のなかでも、従業員の安全配慮義務、賃金の支払い、雇用の終了等雇用主の立場で特に留意しておくべき重要な事項に関して概説する。

### Introduction

Myanmar government has announced various measures to prevent the further spread of COVID-19 in the country which has had a significant impact on business operations, workforces, employers and employees in Myanmar. We set out below is a summary of key considerations for employers and compliance issues in light of the situation in Myanmar.

### Health and safety obligations

Under the Factory Act 1951 (the "**FA**") and the Shop and Establishment Law 2016 (the "**SEL**"), an employer and employee have certain obligations. The employer is obliged to take necessary measures for the safety of workplace for their employees as per the nature of business, and the employee is required to adhere to those measures and follow the workplace safety directions. In addition, employers are obliged to report any suspected outbreak of COVID-19 to the relevant health officer, as Ministry of Health and Sports ("**MOHS**") designated COVID-19 as a principal epidemic disease or notifiable disease under the Section 21 (b) of the Prevention and Control of Communicable Diseases Law 1995 (the "**PCCDL**"). Non-compliance with the PCCDL's reporting requirement may result in imprisonment of up to six months being imposed, fines or both.

Pursuant to Section 21 (b) of the PCCDL, the MOHS issued an announcement in late September requiring all employees of organizations and companies to work from home, except for employees engaged in essential business such as financial services, food production businesses, pharmaceutical and medical supplies, etc. If the employees are required to continue to come to work, employers should ensure the workplace is kept clean and sanitized under the FA and SEL, and must comply with the measures notified by the MOHS in respect of preventing the occurrence and spread of communicable diseases.

### Payment of salary

For industries that are directly affected by the outbreak, employers may consider temporarily laying-off their employees or enforce paid leave for their employees. The issue that arises is whether the employees are entitled to their full pay for the duration when they are required to be off-work. The Minimum Wages Law 2013 provides that the employees shall be entitled to receive full-time wages even if they work fewer hours for reasons other than their preference or choice. Additionally according to Section 5(d) of the Employment and Skills Development Law 2013, the Ministry shall issue a notification to have employers provide the prescribed amount of compensation to workers if a task is completed earlier than the time stipulated by an employment agreement, closure of a part or whole of the because of an unforeseeable situation, or due to a business closure in other circumstances. Nevertheless, no notification has been issued on this subject as yet, and as of now the employer does not have the right to impose salary cuts or reduce working hours or working days without the consent of the employee.

### Termination of employment

The Standard Employment Contract Template 2017 provides for guidelines on termination of employment by providing at least one months' prior notice and payment of the relevant severance payment (ranging from half to 13 months' salary) based on the employee's length of employment. The investors with the MIC Permit or MIC Endorsement that

intend to reduce the number of employees would be required to obtain prior approval from the Myanmar Investment Commission under the Myanmar Investment Law 2016.

## Social security benefit for redundant employees

The Social Security Law 2012 provides certain benefits for employees who are registered with the Social Security Board ("**SSB**") and who have been made redundant or have become unemployed due to the closure of workplace, including the right to cash benefits under Section 23. During the period of the COVID-29 outbreak, the Ministry of Labor, Immigration and Population ("**MOLIP**") has issued notifications in relation to social security benefits for the SSB insured employees. MOLIP has issued Directive 64/2020, providing that employees registered with the SSB who have lost their jobs are able to receive (i) healthcare benefits for one year starting from the date of unemployment; and (ii) travel allowance and medical costs for one year from the date of unemployment. Additionally, the MOLIP has issued Directive 83/2020, providing social security benefit for SSB insured employees who are temporarily unable to work until the date of the reopening of their workplace. Such employees are entitled to financial support of up to 40% of their salaries for the days on which they were unemployed, calculated based on contributions made to their social security account.

## When employee is diagnosed with COVID-19

According to Section 6, subsection (1) of the Leave and Holiday Act 1951, an employee who is diagnosed with COVID-19 is entitled to paid leave not exceeding 30 days in a year subject to provision of a medical certificate. However, the employee will not be entitled to paid medical leave until he has been in service for at least six months.
SSB insured employee who is sick and who had paid contribution to health and social care fund has the right to obtain medical treatment for sickness and claim expenses and cash benefit relating to the sickness up to 60% of the average wage of the previous four months, if it relates to sickness up to 26 weeks.

## Conclusion

The employers should bear the aforesaid points in mind and should ensure the measures, instructions, guidelines which are regularly updated by the MOHS, MOLIP and other relevant authorities are complied with in order to avoid falling foul of any rules, the risk of employment disputes or other problems that may arise.

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