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Thailand

**NEWLY STIMULATED LEGISLATIONS AND MEASURES AGAINST BUSINESS RECESSION FROM COVID-19**

タイ政府は、新型コロナウイルスの影響を軽減するため、中小企業向けの低金利融資、社債市場への流動性供給等の各種対策を承認した。今年1月（新型コロナウイルスの感染が拡大する前）に承認済みの景気対策（国内投資に対する税務恩典制度等）とあわせて、タイ政府の主要な経済対策の概要を紹介する。

**Background**

To mitigate the effects of the COVID-19 outbreak, several economic measures have been introduced by the Government. In this article, we listed the measures and legislations noteworthy for investors for your attention.

**Detailed Information****1. Measures under the Cabinet Resolution of 7 April 2020**

On 7 April 2020, Thai Cabinet has swiftly approved some measures including 3 interesting legislations worth approximately 1.9 trillion THB in total for providing soft loans to Small and Medium sized Enterprises (“SMEs”), the Corporate Bond Stabilization Fund loan and raising the loans to be served as relief measures to alleviate the effects of COVID-19. Summaries of the approved measures and legislations are as follows:

**1.1 Emergency Decree on Financial Assistance to SMEs Affected by 2019’s Coronavirus Pandemic of 2020 (effective from 19 April 2020)**

- To provide payment holiday (suspension of repayment) for 6 months for those SMEs debtors having the credit line of not more than 100 million THB with each commercial bank or financial institution.

- To provide soft loans of 500 million THB to each commercial bank at a low interest rate by the Bank of Thailand (“**BOT**”). Such on-lent money will be provided to SMEs through each commercial bank with the following material terms and conditions:

<b>Details Terms and Condition</b>	
<b>Interest rate</b>	<ul style="list-style-type: none"> <li>- 6 month-interest free (0%)</li> <li>- Thereafter 2% per annum</li> </ul>
<b>Maximum drawdown</b>	20% of the outstanding loan as of the end of December 2019

The SMEs who will be eligible for the abovementioned loan must:

- (i) operate domestically;
- (ii) be a non- listed company in the Stock Exchange of Thailand (SET) or the Market Alternative Investment (MAI);
- (iii) have the total credit line of not more than 500 million THB with each commercial bank; and
- (iv) not be classified as NPL as of 31 December 2019.

### **1.2 Emergency Decree on Maintaining the Nation’s Financial System Stability and Economic Security of 2020 (effective from 19 April 2020)**

The corporate bond market is one of the financing tools for business. In Thailand, the total outstanding of Thai corporate bond is approximately 3.6 trillion THB (equivalent to 20% of the GDP). Due to the current economic situation, it may affect the bondholders’ confidence, so many bond issuer companies will face liquidity shortage due to the additional financing for rollover of their bonds. Thus, the Ministry of Finance (“**MOF**”) and the BOT have founded the Corporate Bond Stabilization Fund (“**BSF**”) to stabilize the corporate bond market by making a provision of bridge financing (with higher-than-market interest rate) to corporations whose bonds will mature during 2020-2021.

Brief qualifications of the corporate bonds which will be eligible for the above support are as follows:

- (i) being at least an investment grade
- (ii) majority of financing sources must be from those other than the corporate bonds (e.g. bank loans, or capital increase)
- (iii) having a clear cut long term financing plan
- (iv) being qualified to and complied with conditions as set out by the BSF

### **1.3 Emergency Decree Authorizing the Ministry of Finance to Raise Loans to Solve, Aid, and Recover Economy and Society Affected by 2019’s Coronavirus Pandemic of 2020 (effective 19 April 2020)**

The MOF will borrow money to support the following 2 stimulus packages, at the total budget of 1 trillion THB, to alleviate the difficulties and decelerate the economic recession:

- 1<sup>st</sup> stimulus: 600 billion THB to support and aid people (including 6 month cash giveaways), and to implement the medical and public health improvement

- 2<sup>nd</sup> stimulus: 400 billion THB to rehabilitate the domestic economy, e.g. (i) to enhance the trade, production and service capacities, (ii) to develop the local infrastructure and local economic, and (iii) to promote and stimulate the consumption and investment in the private sectors

## 2. Measures under the Cabinet Resolutions of 28 January 2020

The above measurements do not include the following investment promotion packages adopted by the Cabinet early this year (28 January 2020) aiming to target the 2020-economic slowdown - prior to the COVID-19 outbreak. Although, unfortunately, the issue of the details thereof has been delayed due to the COVID-19 outbreak, based on our latest conversation with the officers in charge, their principles remain effective so it is worth for investors to be aware of:

### 2.1 First measure: Tax incentive to support domestic investment

Details of Measures	
<b>Eligible person</b>	Either a private limited company or partnership
<b>Preliminary principle</b>	An amount of 250% of the cost for the investment (purchase) of machines of the eligible person to be deducted for the purpose of assessing juristic person income tax. This however excludes those who conduct the leasing business or invest in machines to do the leasing activities.
<b>Promotion period</b>	The cost spent between 1 January 2020 to 31 December 2020

### 2.2 Second measure: Exemption of import duty for machines

Details of Measures	
<b>Eligible person</b>	An entrepreneur
<b>Preliminary principle</b>	Import duty exemption for specific types of machines will be granted to an eligible person. The Notification of the Ministry of Finance prescribing the particular machines entitled to the import duty exemption issued under the Customs Tariff Decree of 1987 will be promulgated later, but there will be 146 types of machines in total.
<b>Promotion period</b>	From the date which the Ministry of Finance prescribes until 31 December 2020

### 2.3 Third measure: Credit facilities for investment and production capacity enhancement

Details of Measures	
<b>Eligible person</b>	(i) An entrepreneur of exportation business including their supply chain, and (ii) An entrepreneur who imports machines and equipment to develop the country
<b>Preliminary principle</b>	In order to support a Thai entrepreneur to enhance his production process and production capacity, a soft loan or a loan with the interest rate favorable to the eligible person will be granted together with other privileges, such as waiver of particular bank fees, through Export-Import Bank of Thailand (“EXIM Bank”). The purpose is to upgrade the production process and to increase the production capacity of the industry in Thailand to “Industry 4.0” with sustainable growth.
<b>Promotion period</b>	From the date of the Cabinet’s approval or as determined by EXIM Bank, otherwise until the approved facilities amount is fully utilized.

## 2.4 Others

In addition to the above Cabinet resolution, a group of state-owned banks will provide the facilities of more than 1 trillion THB for entrepreneurs who would like to invest in the Eastern Economic Corridor, in the five target businesses (so-called New S-curve, i.e. robotics, aviation and logistics, digital, biofuels and biochemical, and medical hub), supply chain thereto, agro processing business, etc.

## Conclusion

The above legislations and measurements are only one of many efforts of the Government to recover economic and business situations, and assist those who are affected. Some measures and legislations have been approved only in principle, however, the details thereof are still subject to further consideration which are expected to become definite shortly.

Any current entrepreneurs or potential investors who are seeking for the special incentives above, please feel free to contact us.

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Singapore

## IMPACT OF COVID-19 ON CONTRACTS

新型コロナウイルスの感染拡大によりシンガポールでは「サーキット・ブレーカー」と呼ばれる措置がとられ、少なくとも 5 月 4 日までは事業所の閉鎖や外出自粛等の厳しい制限が課されている。それに伴いシンガポールの国会で 4 月 7 日付で可決された COVID-19 暫定措置法では、特定の契約に関して義務の不履行に係る暫定的な救済措置を定める等、企業の救済に向けた動きも見られる。本稿では COVID-19 暫定措置法の特重要な事項に関してその概要を解説する。

### Introduction

When the World Health Organization characterized the COVID-19 outbreak as a pandemic on 11 March 2020, and as countries implemented increasingly strict restrictions on travel and movement, business owners and employees everywhere had very limited time to react. In Singapore, restrictive measures were continuously stepped up in response to surges in COVID-19 cases, culminating in a “circuit breaker” that would be in place for another month until 1 June 2020, if not longer. In line with its reputation for being one of the top commercial hubs in Asia, Singapore has not hesitated in passing legislation to manage contractual relations of parties that have largely been thrown into chaos as the pandemic escalated. In this article, we provide a summary of the key items that clients with business interests in Singapore should be aware of.

### COVID-19 (Temporary Measures) Act 2020 (“Act”)

While the Act was passed into law on 7 April 2020, there are different commencement dates for different parts of the Act. The temporary relief measures discussed below came into operation on 20 April 2020. Section 3 of the Act provides that the Minister may, by order in the Gazette, prescribe a period of up to 6 months for the suspension of contractual obligations and valid actions a party could take with respect to its rights under contract. Such period may be extended or shortened more than once, depending on how the COVID-19 pandemic develops. As of the date of this publication, the prescribed period is 6 months commencing on 20 April 2020.

In a rare move by the Singapore government, which has always respected and upheld the sanctity of contracts, certain provisions of the Act have retroactive effect. For example, although the Act came into force in 7 April 2020, it covers obligations that were due on or after 1 February 2020 that a party could not perform due, to a material extent, to a COVID-19 event.

### Types of Contracts Awarded Temporary Relief

At the outset, it is important to note that the relief measures do not apply to a contract if it was entered into or renewed (other than automatically) on or after **25 March 2020**, even if it falls under one of the categories described below. The rationale for this is that the Singapore Health Ministry enhanced restrictions on 24 March 2020, so parties with knowledge of those facts who entered into contracts should not be allowed to seek help from the Act.

The relief measures apply to “scheduled contracts”, defined exhaustively in the Schedule of the Act:

1. A contract for the grant of a **loan facility** by a licensed bank or finance company to an enterprise,<sup>1</sup> where such facility is **secured against** any commercial or industrial **immovable property or any plant, machinery or fixed asset** located in Singapore;
2. A **performance bond** or equivalent that is granted pursuant to a construction contract or supply contract;
3. A **hire-purchase agreement or conditional sales agreement**, where the good hired or conditionally sold under the agreement is —

<sup>1</sup> “Enterprise” refers to any entity incorporated, formed or established in Singapore and carries on a business in Singapore that (i) is at least 30% owned by Singapore citizens or permanent residents or both and (ii) has a turnover of under \$100 million in the latest financial year.

- (i) any plant, machinery or fixed asset located in Singapore, where such plant, machinery or fixed asset is used for manufacturing, production or other business purposes; or
  - (ii) a commercial vehicle;
4. An **event contract**, which refers to a contract to provide venue, accommodation, amenities, transport, entertainment, catering or other goods or services for (a) a business meeting, incentive travel, conference, exhibition, sales event, concert, show, wedding, party or other social gathering, or sporting event, or (b) the participants, attendees, guests, patrons or spectators of any of the events mentioned in (a);
  5. A **tourism-related contract**, which includes —
    - (i) a contract for international carriage of passengers by sea or land,
    - (ii) a contract for the provision of transport, short-term accommodation, entertainment, dining, catering, tours or other tourism-related goods or services for domestic or outbound tourists to Singapore;
    - (iii) a contract for the promotion of tourism in Singapore or the distribution for the purposes of trade or retail of products related to such tourism;
  6. A **construction contract**, under which one party undertakes to carry out construction work, whether including the supply of goods or services or otherwise, for one or more other parties, or to supply services to one or more other parties;
  7. A **supply contract**, under which —
    - (i) one party undertakes to supply goods to any other party who is engaged in the business of carrying out construction work or who causes to be carried out construction work;
    - (ii) the supply is for the purpose of construction work carried out or caused to be carried out by the second-mentioned party; and
    - (iii) the first-mentioned party is not required to assemble, construct or install the goods at or on the construction site; and
  8. A **lease or licence of non-residential immovable property**.

### Temporary Reliefs Granted

If a Party A to a scheduled contract is unable to perform an obligation that was to be performed on or after 1 February 2020, and such inability is to **a material extent** caused by a COVID-19 event, the counterparty to the contract is not allowed to take any of the following actions:

1. Commence or continue an action in a court against Party A or Party A's guarantor or surety;
2. Commence or continue any domestic arbitration<sup>2</sup> against Party A or Party A's guarantor or surety;
3. Enforce any security over any immovable property;
4. Enforce any security over any movable property used for the purpose of a trade, business or profession, such as plant and machinery;
5. Apply to bankrupt or wind up Party A or Party A's guarantor or surety;
6. Apply to place Party A or Party A's guarantor or surety into judicial management;

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<sup>2</sup> An arbitration is domestic as long as none of the parties to the arbitration agreement has its place of business in any State other than Singapore, see Section 5 of International Arbitration Act (Cap. 143A) for further details on the situations where an arbitration would be considered international. All arbitrations not falling within the definition of "international" is considered domestic.

7. Apply under Section 210(1) of the Companies Act for a meeting of creditors to approve a scheme of arrangement in relation to Party A or Party A's guarantor or surety;
8. Appoint a receiver or manager over any property or undertaking of Party A or Party A's guarantor or surety;
9. Commence execution, distress or legal proceedings against any property of Party A or Party A's guarantor or surety, unless the court's permission has been obtained;
10. Repossess any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, being goods used for the purpose of a trade, business or profession;
11. Exercise a right of re-entry, forfeit, or terminate a lease or licence of immovable property for the non-payment of rent or other moneys;
12. Enforce a judgment, domestic arbitral award or determination by an adjudicator of a construction dispute against Party A or Party A's guarantor or surety.

Any person (including natural persons and legal entities) who contravenes the Act by taking any prohibited action without reasonable excuse is liable on conviction to a fine up to SGD 1,000. Moreover, any attempt to repossess, forfeit, or terminate a contract in contravention of the Act would be void or invalid.

### Notification Requirement

There is no automatic relief granted under the Act. The Party A that intends to seek relief under the Act **must** serve a notification for relief on the counterparty, any guarantor or surety for Party A's obligation, and any other person as may be prescribed by the Act. If the counterparty contests Party A's attempt to seek temporary relief, the counterparty will have to file an application to the Registrar of Assessors, and serve this application to Party A and Party A's guarantor or surety.

Details of the notification requirements can be found at <http://www.mlaw.gov.sg/covid19-relief>.

### Important Considerations

The Act may be an attractive option for those who need relief from pressing contractual obligations that are otherwise difficult to perform in light of the COVID-19 situation. However, it is important to note that the Act can be invoked only if the inability to perform was to a **material extent** due to a COVID-19 event. This leaves room for interpretation on how strong the impact must be to be considered 'material'.

In the event an assessor finds that the case in question is a scheduled contract to which the Act applies, the main guiding principle for the assessors as provided by the Act is to "achieve an outcome that is just and equitable in the circumstances of the case". When making a determination, an assessor may even take into account the ability and financial capacity of the party concerned to perform the obligation in question. The assessors' determinations are non-appealable, and parties are not allowed to engage lawyers to represent them in the proceedings.

Finally, it bears reminding that the period for which contractual obligations are suspended under the Act are subject to change. Given the Singapore government's efficiency and close monitoring of the developments of the COVID-19 pandemic, any party that wishes to seek the protection afforded by the Act must remain vigilant of any reduction of the prescribed period.

### Temporary Relief for Financially Distressed Persons

The Act also provides temporary relief for distressed companies. Previously, a company that could not satisfy its debt within 21 days of being served with a statutory demand for over SGD 10,000 could potentially face winding up proceedings commenced by its creditor. The threshold has now been raised to SGD 100,000, and only if a company debtor could not satisfy the debt within 6 months from the service of the statutory demand.

Individuals face the possibility of bankruptcy if s/he was unable to satisfy a statutory demand for at least SGD 15,000

within 21 days. The threshold has been raised to SGD 60,000, and only if that individual debtor could not satisfy the debt within 6 months from the service of the statutory demand.

### **Conclusion**

In these uncertain times, it is useful to take a step back and take time to consider your obligations and options, which may not only be affected by contract but also by legislation. While the Singapore government has made laudable efforts to alleviate the pressures of COVID-19, the enormity of the pandemic's impact is not something that can be easily managed. It is clear from the Act that the government's priority is to protect its citizens and businesses, while balancing it with the fairest outcome that can be achieved under the unpredictable circumstances. NO&T will continue to operate remotely and work with our clients to navigate and manage the impact of the pandemic.

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## Philippines

**GUIDELINES ON ATTENDANCE AND PARTICIPATION OF MEETINGS THROUGH REMOTE COMMUNICATION**

2019年に施行された改正会社法では、それまで認められていた取締役会に加えて株主総会についても電話会議やビデオ会議システム等の遠隔通信手段を利用した開催が可能となった。これを受けて、2020年3月、フィリピンの証券取引委員会は遠隔通信を通じた取締役会及び株主総会の出席に関するガイドラインを発行した。本稿はこのガイドラインについてその概要を紹介するものである。

On March 12, 2020, the Philippine Securities and Exchange Commission (“SEC”) issued Memorandum Circular No. 6, series of 2020 on the guidelines for the attendance and participation of directors and shareholders at regular and special meetings through remote communication (the “Guidelines”) pursuant to the Revised Corporation Code or Republic Act No. 11232.

**Background**

Prior to the effectivity of the Revised Corporation Code on February 23, 2019, only board meetings could be conducted through teleconferencing or videoconferencing under SEC Memorandum Circular No. 15, series of 2001, while shareholders’ meetings still had to be conducted physically, with shareholders participating at such meetings either in person or by proxy.

As a result of the amendments introduced by the Revised Corporation Code, an express provision that board meetings may be conducted through remote communication has been incorporated into the governing law, and shareholders who cannot physically attend and vote at meetings may now participate through teleconferencing, videoconferencing and other remote or electronic means of communication, when so allowed in the by-laws or by majority resolution of the board of directors.

While the Guidelines generally grant corporations the discretion to issue their own internal procedures and/or by-law provisions providing for specific mechanisms on the conduct of board or shareholders’ meetings through remote communication, and addressing other administrative, technical and logistical issues, corporations may wish to consider the following points for guidance in formulating their internal procedure and/or by-law provisions for such matter:

**Guidelines on Board Meetings**

Directors who cannot physically attend or vote at board meetings can participate and vote through remote communication or other alternative modes of communication that allow them reasonable opportunities to participate. However, directors cannot attend or vote by proxy at board meetings.

The Guidelines provide that notice of board meetings may be sent to directors through electronic mail, messaging service or such other manner as may be provided in the by-laws or board resolution. The notice shall include information (“**Information**”), among others, on (i) the date, time, and place of the meeting, (ii) the agenda of the meeting, (iii) pertinent materials for discussion, (iv) whether a director may participate via remote communication (v) contact information of the corporate secretary or office staff with whom the director may communicate, (vi) the fact that there will be visual or audio recording of the meeting for future reference, and (vii) instructions to facilitate participation in the meeting through remote communication.

If a director intends to participate in a board meeting through remote communication, he/she shall notify the presiding officer and corporate secretary of his/her intention in advance. During the meeting, the attendees shall state for the record (i) their full name, position, location, and specify the device used (e.g., smartphone, tablet, laptop, etc.), and (ii) confirm whether he/she can hear and/or see the other attendees clearly and received or waived the notice requirement, all of which shall be noted in the minutes of the meeting (“**Minutes**”).

A director who participates through remote communication is deemed present for purposes of determining quorum. In case of a need to vote on any item on the agenda, the director participating through remote communication may

cast his/her vote through electronic mail, messaging service or such other manner as may be provided in the internal procedure. The votes shall be sent to the presiding officer or corporate secretary for notation in the Minutes.

### **Guidelines on Shareholders' Meetings**

On the other hand, shareholders who cannot physically attend and vote at a shareholders' meeting may participate either through proxy, or through remote communication or in absentia when so provided in the by-laws or by resolution of the majority of the board directors, which resolution shall be applicable only for a particular meeting.

It should be noted, unlike in the case of board meetings through remote communication, before shareholders' meetings may be conducted through remote communication, the Revised Corporation Code and Guidelines require that there should first be some by-law provision or a resolution by majority of the board of directors allowing for the same. By way of exception, even in the absence of by-law provisions, shareholders of corporations vested with public interest (e.g., banks, insurance companies, etc.), may still vote through remote communication or in absentia in the election of directors and officers of such corporations.

Notice of shareholders' meetings shall include the Information, as discussed above, with materials for discussion to be marked and numbered in such manner that the shareholder participating through remote communication can easily follow and participate.

The notice may be sent to shareholders through electronic mail or such other manner as may be provided in the by-laws, at least 21 days prior to the regular (annual) shareholders' meetings and at least 1 week prior to a special shareholders' meeting, unless a longer period is provided in the by-laws. In case of postponement of regular shareholders' meetings, written notice shall be sent to all shareholders at least 2 weeks prior to the original date of the meeting, unless a longer period is also provided in the by-laws. However, a shareholder may likewise waive the requirement of notice, expressly or impliedly.

While board meetings may be conducted anywhere in or outside the Philippines, the Revised Corporation Code requires shareholders' meetings to be held at the principal office of the corporation, or if not practicable, in the city or municipality where the principal office of the corporation is located. Given these limitations, the Guidelines state that the presiding officer should still call or preside the regular or special shareholders' meeting, accordingly.

Notwithstanding, similar to the guidance on board meetings through remote communication, in case of shareholders' meetings, the shareholder who intends to participate in a meeting through remote communication should notify the presiding officer and corporate secretary in advance of his/ her intention. The corporate secretary shall note the fact in the Minutes. A shareholder who participates through remote communication or in absentia is also deemed present for purposes of determining quorum.

For the convenience of the shareholders, the Guidelines encourages corporations to adopt internal procedures, which may cover among others: (i) mechanisms to verify the identity of shareholders and who among them have a right to vote during the meeting, (ii) mechanisms to enable shareholders to vote during the meeting, including ensuring that the integrity and secretary of votes are protected, (iii) procedures for documenting meetings and process or motions which may be done, and (iv) mechanisms in making the recordings of the meeting available to shareholders.

### **Conclusion**

Considering the enhanced community quarantine of the Philippines due to COVID-19 disease started as early as March 14, 2020, the Guidelines come at an opportune moment as corporations are compelled to rely on remote communication to carry out their business during such period.

For affected corporations which lack facilities for remote communication, the SEC in Memorandum Circular No. 9, series of 2020 has provided that any election of directors and officers at a regular shareholders' meeting originally scheduled between March 1, 2020 to May 31, 2020 may be postponed on account of health and safety reasons in relation to the COVID-19 disease.

The postponement shall be reported to the SEC within 30 days from the original meeting date either through mail, courier or electronic means accompanied by statement specifying a new date for election which is within 60 days from the original meeting date. The SEC may further extend the period covered as may be necessary in light of the evolving

situation.

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