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This issue covers the following topics:

Vietnam

AMENDMENT TO LAW ON ENTERPRISES

2021 年 1 月 1 日に施行されるベトナムの新企業法は、各種企業の組織構成や事業運営についての規制の改正を含んでおり、企業の設立、運営における使い勝手を高めることが期待される。本稿は、実務上特に注目される改正点を概説する。

New Law on Enterprises of Vietnam (the "**2020 LOE**") which has recently approved by The National Assembly of Vietnam on 17 June 2020 is slated to come into effect from 1 January 2021. Here are some notable points of the 2020 LOE in comparison with Law on Enterprises 2014 (the "**2014 LOE**"), mainly focusing on amendment regarding the most commonly used types of enterprise which are limited liability company ("**LLC**") and joint stock company ("**JSC**").

1. Simplification of administrative procedures

As a part of Vietnamese government's attempt at introducing administrative reforms to improve the business environment, the 2020 LOE has introduced many amendments to simplify and clarify administrative procedures relating to management and operation of enterprises.

Some key provisions are as follows: firstly, electronic application dossiers for procedures relating to enterprise information registration for online submission can completely replace "traditional" paper documents. Secondly, enterprises are free to choose to have a digital or a physical stamp and may have self-designed stamp with un-limited numbers of stamps. Digital signature shall have full legal validity so that the registration of stamp with the authority is no longer required. On the other hand, this provision raises a matter on the truthfulness of documents because no one can confirm the seal of an enterprise. Thirdly, the 2020 LOE removes the requirement to notify information of change of managers of an enterprise. Finally, prior notice in case of business suspension or resumption of its business may be submitted for a shorter time limit (from 15 days to 3 working days).

2. Time limit for charter capital contribution

The 2014 LOE provided a fixed time limit for charter capital contribution i.e. 90 days from the issuance date of the enterprise registration certificate. This duration will remain unchanged in most cases. However, the 2020 LOE has prolonged such term in case of capital contribution by assets by excluding duration of transporting or importing assets contributed as capital and conducting administrative procedures for conversion of ownership of assets. Therefore, members and shareholders can take advantage of this provision in case of capital contribution by physical assets.

3. State owned enterprises definition

The definition of a state owned enterprise has been significantly amended. Under the new law, state owned enterprises would mean enterprises in which the State holds above fifty per cent (50%) of the charter capital and/or the total number of voting shares while under the old law this was 100% of the charter capital.

4. Liabilities of multiple legal representatives

In case of absence of detailed provisions in the company's charter, the power and responsibility among legal representatives are specified by the new provision under the new LOE. Specifically, if the company has more than one legal representative, "*each representative shall have full authority of the enterprise before a third party and must be jointly liable for any loss and damage to the enterprise*". On the other hand, the new law is still silent on whether or not enterprises can agree to indemnify or insure the legal representatives against such liabilities.

5. Key changes regarding Limited liability companies

Under the 2020 LOE, the type of enterprise of LLC including single-member limited liability companies ("SLLC") and multi-member limited liability companies ("MLLC") have some major changes as follows:

Company's organization

The 2020 LOE removes the requirement of establishment of inspection committee in MLLC having 11 members and the requirement of inspector in SLLC, (save for MLLC having a member to be a state owned enterprise or a state owned enterprise's subsidiary and LLCs being state owned enterprises).

Signing the Minutes of the Members' Council meeting of MLLC

As the supreme governing body of the company, a member's council meeting of MLLC require necessary number of delegated representatives of members. Furthermore, the Members' Council meeting must be held at least once a year, and its minutes must be prepared, signed and ratified by secretary and chairperson of the meeting. Although the 2014 LOE was vague about minutes' effectiveness in case the secretary and the chairperson of the meeting refuse to sign, under the new LOE, the minutes will be still valid if signed by all other members participating in the meeting.

Clarification of the title of the legal representative

The new LOE additionally indicates that at least one legal representative shall hold the title of the Chairman, or (General) Director in the MLLC or a single-member LLC owned by an organization

6. Major changes regarding Joint Stock Company (JSC)

Adjustment to requirements on head of inspection committee and inspector

Under the 2014 LOE, the head of the inspection committee of a JSC were limited to a professional accountant or auditor working full-time in the company. There were some discussions raised relating the term "work full-time" ("chuyên trách"- in Vietnamese) to determine whether the head of inspection committee can concurrently hold the same position in a different company or not. However, the new LOE only requires that the head of inspection committee must have a university graduate certificate or higher in a specialized field such as financial, accounting, auditing, law, business management specialty, or other specialty relating to the company's business. It takes a lot of time and effort to get a professional accountant or auditor certificate in Vietnam, so this relaxation of requirements will be helpful for LLC or JSC to appoint their personnel. Moreover, abolishment of requirement of full-time working should be understood that an individual may be an inspector in more than one enterprise.

Besides, the 2020 LOE also puts an addition condition on inspector that is: "*the inspector must be trained in economic, financial, accounting, auditing, law, business management specialty, or other specialty relating to the company's business*".

Adjustment to the authority and quorum for general meetings of shareholders

The quorum of general shareholders' meetings was at least 51% of total number of the voting shares under the 2014 LOE, but has been adjusted to more than 50% under the new LOE. In addition, the general meeting of shareholders will have the following additional rights:

(i) entitled to decide the budget or the total remuneration, bonus and other benefits for the Board of Directors ("BOD") and Inspection Committee ("IC")

(ii) entitled to approve internal governance regulations; operation regulations of the BOD and IC

(iii) entitled to approve the list of independent auditing firms; decide the independent auditing firm to inspect the company's operations, dismiss the independent auditor when deemed necessary.

Strengthening the rights of minority shareholders

In practice, if there are conflicts of interest between minority shareholders and major shareholders, minority shareholders often suffer more loss and damage s. Therefore, 2020 LOE gives minority shareholders greater protections through the following three points:

(1) shareholders holding 5% of the shares (as opposed to 10% under the 2014 LOE) can now exercise the right to convene a general meeting of shareholders, the right to access important documents of the company such as financial statements, BOD's resolutions, etc.. Further, minority shareholders no longer need to hold their shares for at least 6 consecutive months to exercise these general rights.

(2) Under the 2014 LOE, only shareholders owning shares for a consecutive period of at least one year were entitled to exercise the right to request the BOD to suspend or cancel the implementation of its resolutions which violate the laws, the company's charter, the GMS's resolutions and cause damages to the company. However, under the 2020 LOE, all shareholders have this right regardless of their shareholding period.

(3) shareholders owning at least 1% of the total ordinary shares, not necessarily for 6 consecutive months, will have the right to file a lawsuit on their own or on behalf of the company against BOD Chairman, Director or General Director in order to request the return of benefits or compensation for damage to the company or the third party.

[Author]
Tran Thi Viet Nga (Nagashima Ohno & Tsunematsu Hanoi Branch)
Nga_tran@noandt.com
Nga Tran is a Vietnamese qualified lawyer in the Hanoi Office. She has been assisting foreign investors, foregin invested enterprises and foreign organizations to start and expand their business and operation in Vietnam. She also provides legal advices regarding general corporate matters, competition, labor issues, and regulatory and compliance matters.

Singapore

NEW PROPOSED AMENDMENTS TO THE INTERNATIONAL ARBITRATION ACT

2020 年 9 月 1 日、シンガポール法務省は国際仲裁法の改正案を議会に上程した。改正案では、三当事者以上の複数当事者間での仲裁における仲裁人の選定手続や仲裁規定を通した守秘義務の強化等の重要な改正が提案されている。本稿ではかかる改正案の概要について紹介する。

On 1 September 2020, the Singapore Ministry of Law introduced the International Arbitration (Amendment) Bill (the "Bill") for discussion in parliament. The Bill proposes amendments to the International Arbitration Act (Cap. 143A) (the "IAA"), which governs the conduct of international commercial arbitrations seated in Singapore. Substantive amendments to the IAA were last made in 2012.

The Bill proposes two key amendments: (i) a default appointment procedure for arbitrators in multi-party arbitrations and (ii) an express recognition of the powers of an arbitral tribunal and the Singapore High Court to enforce obligations of confidentiality.

Background

The Ministry of Law periodically undertakes a review of developments and best practices in the field of arbitration. This represents Singapore's continuing efforts to position itself as a leading international commercial arbitration hub.

As part of these efforts, the Ministry of Law conducted a public consultation on various proposals to amend the IAA, including provisions that would:

- provide a default procedure for the appointment of arbitrators in cases involving multiple parties;
- recognise the powers of an arbitral tribunal and the Singapore High Court to enforce obligations of confidentiality in arbitration;
- allow parties, by mutual agreement, to request the arbitral tribunal to decide on jurisdiction at the preliminary award stage; and
- allow a party to arbitral proceedings to appeal to the Singapore High Court on a question of law arising out of an arbitral award, where parties have opted in to this appeal mechanism.

After considering responses submitted by stakeholders including businesses, Singapore and international legal practitioners, arbitrators, and international arbitral institutions, the Bill introduces the first two proposed amendments above. The Ministry of Law has stated that the remaining proposals will continue to be studied.

Key aspects of the proposed amendments

The proposed amendments are designed to support the efficacy of arbitration proceedings and strengthen the element of confidentiality underpinning the arbitral process.

Default mode of appointment of arbitrators in multi-party arbitrations

Presently, the provisions of the IAA on the mode of appointment of arbitrators only address situations where there are two parties to an arbitration agreement. This has left a gap where cases involving three or more parties are concerned.

In response to this, the first proposed amendment set out in the Bill establishes a default mode of appointment of arbitrators where there are more than two parties to an arbitration and where the parties' arbitration agreement does not specify a procedure for this purpose.

Under the new proposed default mode of appointment of arbitrators:

- The claimants shall jointly nominate one arbitrator, and the respondents another. The parties' two nominated arbitrators shall then nominate a third arbitrator within 60 days after the respondent's receipt of

the request to refer the dispute to arbitration (or, where there is more than one respondent, the date of receipt by the last respondent). The third arbitrator shall be the presiding arbitrator.

- If either side fails to appoint their respective arbitrator, the appointing authority (i.e. the arbitral institution chosen to administer the proceedings) shall, at the request of any party, appoint all three arbitrators.

- If the two nominated arbitrators are unable to agree upon the appointment of the third arbitrator within the stipulated time, the appointing authority shall do so having regard to all relevant circumstances.

This proposed amendment addresses the delays in the constitution of the arbitral tribunal, that often arise where there are more than two parties to the arbitration agreement and it becomes more difficult to achieve consensus on the applicable procedure. As there is a recent observable increase in multi-party arbitrations (for example, in disputes arising out of joint venture agreements and M&A transactions), this amendment offers a welcome solution. It also bring the IAA into alignment with the rules of major arbitral institutions (including the ICC, HKIAC, LCIA and SIAC) which set out the applicable arbitrator nomination procedure in multi-party arbitrations in the absence of agreement by the parties.

Powers of an arbitral tribunal and the Singapore High Court to enforce confidentiality obligations

One of the important reasons parties prefer to resolve disputes by arbitration is the element of confidentiality which underpins the proceedings, in contrast to national court litigation. However, there is no universal approach to maintaining confidentiality in arbitrations (in particular, certain arbitration institutional rules contain express provisions for confidentiality whereas others do not, and the degree and scope of confidentiality obligations also vary across domestic laws).

Presently, the IAA does not contain any express provision addressing the duty of confidentiality owed by parties to an arbitration. Where parties specify confidentiality obligations by agreement, these will be given effect under Singapore law. In the absence of such agreement, the parties and the arbitral tribunal have a duty at common law not to disclose confidential information obtained in the course of the proceedings or use them for any apart from the dispute. The Singapore courts, following the approach taken in English law, have recognised this common law duty of confidentiality (see, for instance: *Myanma Yaung Chi Oo Co Ltd* v *Win Win Nu* [2003] SGHC 124 and *International Coal v. Kristle Trading* [2009] 1 SLR(R) 945).

The Bill introduces a new provision that expressly recognizes the powers of an arbitral tribunal and the Singapore High Court to enforce obligations of confidentiality by making the appropriate orders or directions, where such obligations exist. While the Bill does not propose to codify or impose a statutory duty of confidentiality on parties to an arbitration, it strengthens parties' ability to enforce existing obligations by seeking relevant orders from the arbitral tribunal and supervisory court.

Conclusion

Singapore has made significant progress in establishing a comprehensive legal framework for international commercial arbitration. Based on a 2018 study on trends in international arbitration, Singapore ranked the third most preferred seat of arbitration in the world (after London and Paris). This success may well be due in part from the Singapore government's proactivity in developing solutions to benefit users of arbitration, an enterprise that includes these latest proposed legislative amendments to the IAA.

[Author]

Claire Chong (Nagashima Ohno & Tsunematsu Singapore LLP)
claire_chong@noandt.com
Claire Chong is a Singapore qualified attorney in the Singapore office. She focuses her practice on international commercial disputes and investor-state arbitration. She has experience both as counsel and tribunal secretary in international commercial arbitrations conducted under major arbitral rules, including the ICC, ICDR, HKIAC and SIAC rules.

Philippines

BAYANIHAN 2: EXEMPTION FROM M&A NOTIFICATION REQUIREMENTS AND OTHER RELIEFS

フィリピンでは、2020 年 9 月 11 日、新型コロナウイルスの感染拡大によりダメージを受けた経済の復興を後押しする第 2 弾の復興互助法（Bayanihan は「助け合う」という意味のフィリピン人の伝統的な価値観）に大統領が署名し成立した。本稿では、この復興互助法に規定された企業結合届出の免除・猶予措置等の外国投資家にとって重要と思われる規定について概説する。

Six months from the declaration of the state of public health emergency throughout the Philippines, Republic Act No. 11494 or the Bayanihan to Recover as One Act ("**Bayanihan 2**") was signed into law by the Philippine President on 11 September 2020.

As a follow through to the first Bayanihan Act (Republic Act No. 11469 or the Bayanihan to Heal as One Act passed in March 2020), the Bayanihan 2 enacts additional measures to aid in the Philippines' economic recovery from the COVID-19 pandemic. Apart from providing a Php 165-billion stimulus package, the following are some of the significant measures introduced by Bayanihan 2 to encourage economic activity and provide reliefs to affected businesses:

a) Exemption from M&A compulsory notification and moratorium on PCC powers of motu proprio review

Prior to Bayanihan 2, the compulsory notification threshold for mergers and acquisitions, including joint ventures ("**M&A**") was adjusted by the Philippine Competition Commission ("**PCC**") to Php 6 billion for the size of party test and Php 2.4 billion for the size of transaction test effective on 1 March 2020. Parties to M&As breaching such thresholds were required to file a merger notification with the PCC within 30 days from signing of the definitive agreements and prior to the consummation of the transaction, which may have resulted to delays in closing.

However, Bayanihan 2 now provides that M&As with transaction value of less than P50 billion entered into within 2 years from the law coming into effect (15 September 2020) are exempted from the compulsory notification requirements. Bayanihan 2 likewise suspends the PCC's exercise of *motu proprio* review of M&As for a period of 1 year from 15 September 2020.

To provide further guidelines, the PCC has issued the Rules for the Implementation of Section 4(eee) of the Republic Act No. 11494, Relating to the Review of Mergers and Acquisitions (the "**Rules**") on 5 October 2020. The Rules clarify that the threshold for both the size of party and size of transaction test of M&As has been adjusted to Php 50 billion, and that for purposes of the Rules, M&As are deemed "entered into" after parties have executed definitive agreement setting out the complete and final terms and conditions of their transaction, including the rights and obligations between or among the parties. M&As which exceed the transaction value threshold of Php 50 billion or which were entered into prior to 15 September 2020 are not covered by the exemption under Bayanihan 2.

As to the moratorium of the PCC's *motu proprio* review, the Rules clarify that the 1 year moratorium applies only to M&As entered into during the course of Bayanihan 2, while transactions entered into prior to 15 September 2020 or already pending review will not be covered by the moratorium.

While parties to exempt M&As under Bayanihan 2 still have the option to file a voluntary notification with the PCC, it will be given due course at the discretion of the PCC and will be subject to slightly longer review periods of 45 days (as opposed to 30 days) and 90 days (as opposed to 60 days) for Phase I and Phase II review, respectively. Further, the filing of a voluntary notification will act as a waiver of the moratorium on the *motu proprio* review of such transaction.

b) Additional Grace Period from Payment of Loans and Rentals

Aside from the 30-day grace period under first Bayanihan Act, Bayanihan 2 directs all banks, quasi-banks, financing and lending companies, real estate developers, insurance companies providing life insurance policies, pre-need companies, entities providing in-house financing for goods and properties purchased, asset and liabilities management companies and other private and public financial institutions to implement a one-time 60-day grace period for the

payment of all loans (excluding interbank loan and borrowings) or any part thereof falling due on or before 31 December 2020, without interest on interests, penalties, fees, or other charges.

Bayanihan 2 thereby extends the maturity date of such loans, which may be settled on staggered basis without interest on interests, penalties and other charges until 31 December 2020 or as may be agreed upon by the parties. All term extensions or restructuring for loans falling due, or any part thereof, on or before 31 December 2020 will be exempt from payment of documentary stamp taxes.

With respect to payment of commercial rent, Bayanihan 2 grants businesses ordered to temporarily cease operations another minimum 30-day grace period to pay rents falling due within the period of the community quarantine without incurring interests, penalties, fees, and other charges. Payments will instead be amortized in equal monthly installments until 31 December 2020 without any interests, penalties and other charges, and no increase in rental rates would be allowed during the same period.

c) Tax-related Reliefs

Among the tax-related reliefs introduced under Bayanihan 2, is the repeal of the tax imposed on sale, barter, or exchange of shares of stock listed and traded through initial public offering ("**IPO**") to be paid by the seller or transferor, which was previously at 6/10 of 1% of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed of. In a bid to spur continued capital market growth, the repeal of the IPO tax will result in cost saving on part of companies considering listing on the exchange.

Further, Bayanihan 2 will also allow businesses, not otherwise disqualified, to carry over its net operating loss for taxable years 2020 and 2021 as a deduction from its gross income for the next 5 consecutive taxable years immediately following the year of such loss ("**NOLCO**"). Previously, the period to carry over the net operating loss was limited to 3 consecutive taxable years from the year the loss was incurred. With the additional 2 year period to utilize the NOLCO, businesses are being given more time to recoup losses suffered during the COVID-19 pandemic. To implement such tax relief measure, the Bureau of Internal Revenue has issued Revenue Regulation 25-2020, clarifying that "taxable years 2020 and 2021" shall include all those corporations with fiscal years ending on or before 30 June 2021 and 30 June 2022, respectively. Note that there are requirements as to the manner the NOLCO must be shown in the income tax return and notes to the financial statements detailed in Revenue Regulation 25-2020 to enable eligible businesses to successfully claim the deduction.

Conclusion

Through Bayanihan 2, the Philippine government has stepped up its economic recovery plan for the country. Aside from extending financial aid to distressed companies in critically affected sectors such as transportation and tourism, the government has also taken measures to grant reprieve to businesses facing liquidity problems or suffering net losses.

While the M&A market has generally contracted as companies realign resources or take a more cautious approach, for other companies, swiftly pursuing strategic M&As or raising funds through the capital market has become necessary to keep their businesses afloat during this period. As Bayanihan 2 tries to ease the way for such transactions, foreign investors considering M&As into the Philippines may wish to take advantage of the 2 year period wherein the regulatory obstacles for M&As have been reduced.

[Author]

Patricia O. Ko (Nagashima Ohno & Tsunematsu Singapore LLP)
patricia_ko@noandt.com
Patricia O. Ko is a Philippine qualified foreign attorney in the Singapore office. Prior to joining NO&T, she was a Senior Associate in one of the top law firms in the Philippines. Her areas of practice include mergers and acquisitions, foreign direct investment, public-private partnership, securities, general corporate matters, immigration, trademarks, and data privacy. She is experienced in advising clients in commercial transactions involving acquisition of businesses and real estate, joint ventures, corporate restructuring, and regulatory and compliance matters.

[EDITORS' PROFILES]

Nobuo Fukui (Nagashima Ohno & Tsunematsu Singapore LLP)
nobuo_fukui@noandt.com

Nobuo Fukui is a partner at Nagashima Ohno & Tsunematsu and a representative of its Singapore Office (Nagashima Ohno & Tsunematsu Singapore LLP). He has been stationed in Singapore since 2013 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries.

He is a graduate of the University of Tokyo (LL.B., 2001) and Duke Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Widyawan & Partners (Jakarta) from 2010 to 2013, focusing on Indonesian legal practice, and he has extensive legal experience in the Indonesia related transactions.

Rashmi Grover (Nagashima Ohno & Tsunematsu Singapore LLP)
rashmi_grover@noandt.com

Rashmi Grover is an Indian and UK qualified foreign attorney in the Singapore office. Her areas of practice include mergers and acquisitions, private equity and general corporate. She has extensive experience working in the Indian markets and advising clients on corporate commercial and finance transactions including transactions involving mergers, formation of joint ventures, acquisition of stakes in companies, private equity investments, business/asset acquisition transactions, regulatory filings, debt issuances and structured lending transactions.

www.noandt.com

NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan
Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: info@noandt.com

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Singapore Office
(Nagashima Ohno & Tsunematsu Singapore LLP)

6 Battery Road #40-06
Singapore 049909
Tel: +65-6654-1760 (general)
Fax: +65-6654-1770 (general)
Email: info-singapore@noandt.com

Bangkok Office
(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

34th Floor, Bhiraj Tower at EmQuartier
689 Sukhumvit Road, Klongton Nuea
Vadhana, Bangkok 10110, Thailand
Tel: +66-2-302-4800 (general)
Fax: +66-2-302-4899 (general)
Email: info-bangkok@noandt.com

HCMC Office
(Nagashima Ohno & Tsunematsu HCMC Branch)

Suite 1801, Saigon Tower
29 Le Duan Street, District 1
Ho Chi Minh City, Vietnam
Tel: +84-28-3521-8800 (general)
Fax: +84-28-3521-8877 (general)
Email: info-hcmc@noandt.com

Hanoi Office
(Nagashima Ohno & Tsunematsu Hanoi Branch)

Suite 10.04, CornerStone Building
16 Phan Chu Trinh, Hoan Kiem District
Ha Noi City, Vietnam
Tel: +84-24-3266-8140 (general)
Fax: +84-24-3266-8141 (general)
Email: info-hanoi@noandt.com

Shanghai Office
(Nagashima Ohno & Tsunematsu
Shanghai Representative Office)

21st Floor, One ICC, 999 Middle Huaihai Road
Xuhui District, Shanghai 200031, China
Tel: +86-21-2415-2000 (general)
Fax: +86-21-6403-5059 (general)
Email: info-shanghai@noandt.com

Jakarta Desk
(Nagashima Ohno & Tsunematsu Jakarta Desk)

c/o Soemadipradja & Taher
Wisma GKBI, Level 9
Jl. Jenderal Sudirman No. 28
Jakarta 10210, Indonesia
Email: info-jakarta@noandt.com

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