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This issue covers the following topics:

India

Information Technology Intermediary Rules Amended

2021 年 2 月にインド政府がオンラインメディアやソーシャルメディア事業者に対して遵守すべき義務や倫理規定を定めた情報技術規則を制定したことは本ニュースレターでも既報の通りであるが、2022 年 10 月、インド電子情報技術省は、2022 年情報技術（仲介業者ガイドライン及びデジタルメディア倫理コード）改正規則を制定した。本稿では同改正規則の主な内容について概説する。

Introduction

On 25 February 2021, the Government India had notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**Intermediary Rules**") under the Information Technology Act, 2000 ("**IT Act**"). The Intermediary Rules impose obligations on intermediaries, in particular, social media intermediaries and aim to regulate online content by prescribing a code of ethics. More details about the Intermediary Rules can be found in our previous newsletter *[https://www.noandt.com/en/publications/publication21692/]*. After issuing a draft of amendments for public comments in June 2022, on 28 October 2022, the Ministry of Electronics and Information Technology (MEITY) amended the Intermediary Rules by way of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022 ("**Amendment Rules**"). The key provisions of the Amendment Rules are summarized below.

Key Provisions

1. **Language of Policies**: Prior to the amendment, intermediaries were required, as part of their due diligence obligations, to prominently publish rules and regulations/ privacy policy, etc., on their website/ mobile application. Now, the Amendment Rules further enhance these obligations and require intermediaries to not only publish the rules and regulations, etc., but to also ensure that such rules are published in English, or any language specified in the Eighth Schedule of the Constitution of India (which presently consists of 22 regional Indian languages) for access or usage of its platform in the language of the user's choice. This amendment would effectively require the intermediary to ensure that all policies, rules, regulations etc. are available immediately in all of the aforesaid languages.

2. **Ensuring Compliance:** The Intermediary Rules required an intermediary to inform users through its privacy policy, rules etc. not to host, display, upload, modify, publish, transmit, store, or share any information that, amongst others, belongs to another person and to which the user does not have any right, is grossly harmful,

defamatory, obscene, pornographic, paedophilic, or otherwise unlawful in any manner. The Amendment Rules now impose a legal obligation on intermediaries to not only inform users of its rules and regulations/ privacy policy, etc., but ***also to ensure compliance of such policies and rules make reasonable efforts to cause its users*** to not host, display, upload, share etc. any prohibited information. There is no clarity or guidance in the Amendment Rules on what efforts the intermediary is required to take to ensure compliance, however, such an obligation is bound to increase compliance for intermediaries who would now be required to implement additional measures to filter and moderate content by users or use automated tools to detect breach.

3. **Restricted Content**: In accordance with the Intermediary Rules, intermediaries are required to set out in their policies, activities that users are prohibited from undertaking or information that users are prohibited from uploading, hosting or sharing. The list of prohibited information has been expanded to include (i) information that promotes enmity or that could incite violence between different groups on the grounds of religion or caste with the intent to incite violence; and (ii) misinformation. However, the obligation imposed on intermediaries under the Intermediary Rules to ensure that 'defamatory' or 'libellous' content is not hosted on its platform, has now been removed.

4. **Respect of Constitutional Rights**: The Amendment Rules have introduced a new rule which mandates intermediaries to respect constitutional rights of Indian citizens including Articles 14 (right to equality), 19 (right to freedom of speech and expression) and 21 (right to protection of life and personal liberty). No further clarity has been provided on the steps required to be taken by intermediaries that would ensure that such rights are 'respected' or protected.

5. **Changes to the grievance redressal mechanism**: Prior to the amendment, the grievance redressal officer of the intermediary was required to acknowledge complaints within 24 hours and dispose of such complaints within 15 days from receipt. While this obligation continues, the Amendment Rules require intermediaries to resolve complaints concerning removal of information that is in violation of the Intermediary Rules within 72 hours of receiving the complaint, save for complaints regarding, (a) unauthorised use of information belonging to another person and to which the user does not have any right; (b) information that infringes any intellectual property or other proprietary rights; and (c) information that violates any law for the time being in force. All other grievances will continue to follow the 15-day window for redressal/resolution. The Amendment Rules also contain a provision whereby intermediaries are required to develop appropriate safeguards to avoid misuse of the grievance redressal mechanisms by users. Given the reduction in timelines, intermediaries will have to put in place additional measures to handle some complaints within a 72-hour window.

6. **Grievance Appellate Committee (GAC)**: Under the Amendment Rules, the Central Government has been empowered to establish one or more GACs within 3 months from the effective date of the Amendment Rules to allow for appeals from decisions of the grievance officer of an intermediary. The GAC will include 1 chairperson and 2 whole-time members appointed by the Central Government, of which one member will be ex-officio and 2 members would be independent. The resolution of disputes by the GAC will be done entirely online. Appeals from the decisions of a grievance officer need to be filed by the user/aggrieved person within 30 days of receipt of such decision. The GAC must deal with such appeals expeditiously and endeavour to resolve them within 30 (thirty) days from date of receipt of the appeal. Intermediaries are further required to publish a compliance-report on their website, reporting compliance with the orders of GAC.

Conclusion

The Intermediary Rules were introduced to increase accountability of intermediaries and to regulate the publication and transmission of online content. The Amendment Rules further tighten the process of dissemination of information and aim to improve the grievance redressal mechanism. However, the obligations imposed on the intermediaries including the requirement to make reasonable efforts to ensure compliance by users as well as resolving certain complaints within 72 hours would significantly increase compliance costs for intermediaries. The Amendment Rules are effective immediately, thus intermediaries operating in India must take steps to ensure compliance with the Amendment Rules at the earliest.

[Author]

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

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

Indonesia

Key Takeaways on Indonesia's Personal Data Protection Law

インドネシアで 2022 年 10 月、個人情報保護法が制定された。インドネシアではこれまで電子システム及び電子取引に関する法令等において部分的に個人情報の保護が定められていたが、今回の個人情報保護法の制定により初の包括的な個人情報保護の法的枠組みが整備されたことになる。2 年間の移行期間が定められていることから直ちに対応が求められるものではないものの、重要な法令であることから本稿において概説する。

Introduction

After a long wait and several public discussions, the government of Republic of Indonesia finally enacted the Law No. 27 of 2022 on Personal Data Protection on 17 October 2022 ("**PDP Law**"). Prior to the enactment of the PDP Law, some regulations contained certain provisions concerning personal data protection, among others: Government Regulation No. 71 of 2019 on the Implementation of Electronic System and Transaction ("**GR 71/2019**") and Regulation of Minister of Communication and Informatics No. 20 of 2016 on Personal Data Protection in Electronic System ("**MOCI Regulation 20/2016**"). While these regulations have some provisions on personal data protection, the scope such regulations are not comprehensive enough to cover all matters related to personal data. Therefore, it was necessary for Indonesia to implement one comprehensive personal data protection law to regulate all matters pertaining to data protection, in line with the global trend, especially after the enactment of the GDPR in the European Union.

Definition of Personal Data

The PDP Law defines personal data as any data relating to an identified or identifiable natural person who can be identified on the basis of such data or in combination with other information, either directly or indirectly, through an electronic or non-electronic system. This definition is similar to the definition provided under the GR 71/2019.

What is new under the PDP Law is the classification of personal data, where the PDP Law classifies personal data into two categories, namely general personal data and specific personal data. The PDP Law has specifically listed samples for each category. General personal data includes full name, gender, nationality, religion, marital status, and/or a combination of personal data that identifies a person (for example: mobile phone numbers and IP addresses). While specific personal data includes health information, biometric data, genetic data, criminal records, child's data, financial information, and/or any other data which is considered as sensitive data under prevailing laws and regulations.

Based on this classification, the treatment of general personal data and specific personal data is different. The PDP Law regulates that in the event a data controller or data processor collects or processes specific personal data, it is required to carry out assessment of impact on personal data protection, and if the processing of specific personal data is conducted on a large scale, the data controller and data processor must appoint a data protection officer who will be in charge of the security of the specific personal data.

Data Subject, Data Controller, and Data Processor

Data subject is an individual who owns personal data. As the owner of personal data, a data subject has certain rights given under the PDP Law, including but not limited to (i) right to receive information about the clarity of the identity, legal interests and purpose for which his/her personal data is requested and will be used, (ii) right to complete, renew, and rectify the incorrectness of his/her personal data, (iii) right to have an access to his/her personal data, (iv) right to discontinue the processing, delete and destroy the personal data, and (v) right to withdraw his/her consent with respect to the processing of personal data.

The PDP Law also introduces new terminology namely data controller and data processor. Essentially, data controller is the party that determines the purpose of the processing of personal data, while data processor is the party that processes data personal data on behalf of data controller. The differentiation follows the concept that is currently applied in other countries, whereby it is common that a company that wishes to collect and process data (i.e. data controller) appoints a third party service provider (i.e. data processor) to do so on its behalf.

Since data processor is only acting for and on behalf and upon the instructions of data controller, the processing of personal data will be the responsibility of the data controller. As such, the obligations related to personal data under the PDP Law will be mainly imposed on the data controller, such as: obtaining consent from data subject prior to the processing, ensuring the security of personal data, or notifying data subject in the event of failure of personal data protection. The data processor will only be responsible if it is acting beyond the instructions of the data controller. Thus, it is advisable to create a detail and comprehensive agreement between data controller and data processor.

Processing of Personal Data

The "processing" of personal data includes the activities of collecting, processing, analyzing, storing, correcting, displaying, announcing, transferring, disseminating, or destructing of personal data. If a data controller wishes to carry out the processing of personal data, it needs to secure a consent from the data subject to do so. The consent can be requested for certain action or covering all actions that may be done by the data controller. From practical perspective, it is advisable for data controller to secure consent for all activities at the time the personal data is collected so that it will not be required to request a consent for different purposes in the future. The consent must be prepared in Bahasa Indonesia in writing or recorded consent, either electronically or non-electronically.

In addition to consent from data subject, there are other legal basis that can be applied for the processing of personal data, namely:

a. Contractual obligation, namely when the processing of personal data is necessary for the performance of a contract that involves data subject as a party or to fulfil the data subject's request before entering into a contract;

b. Legal obligation, where the processing of personal data is required to comply with the law applicable to the data controller;

c. The processing of personal data is necessary to protect vital interests of the data subject;

d. Protection of public interest; and/or

e. Legitimate interest, where the processing of personal data is necessary for the legitimate interest of the data controller considering its purposes, needs, and the balance between the data controller's interests and data subject's rights.

Data Protection Impact Assessment and Data Protection Officer

The PDP Law regulates that the data controller must perform data protection impact assessment in the event that the processing of personal data has a high risk potential to the data subject, among others:

a. Processing of specific personal data;

b. Processing of personal data on a large scale;

c. Processing of personal data for a systematic evaluation, scoring, or monitoring of a data subject;

d. Processing of personal data for matching or combining a group of data; and/or

e. The use of new technologies in the processing of personal data.

Moreover, certain data controllers and data processors are required to appoint data protection officer who will supervise the compliance with PDP Law, inform and give advice to data controller or data processor related to data protection impact assessment, and act as the contact person for any issues related to the processing of personal data. The data protection officer can be an employee of the data controller or data processor or an external person, but the PDP Law does not regulate the specific requirements for a person to be appointed as the data protection officer.

More detailed rules related to data protection impact assessment and data protection officer will be regulated under the Government Regulation.

Transfer of Personal Data Outside Indonesia and Corporate Action

One of the most common issues that foreign companies operating in Indonesia have with respect to personal data protection is the procedure of transferring personal data outside Indonesia, for example, when the Indonesian subsidiaries wish to share the information on their customers with overseas headquarters. This has been regulated under MOCI Regulation 20/2016, but the implementation is not clear to date. MOCI Regulation 20/2016 explains that the transfer of personal data outside Indonesia must be done through a coordination with the MOCI but so far MOCI has not prepared any guidelines or formal procedures to do so. It appears this condition is abolished under the PDP Law. The PDP Law only requires that the data controllers who wish to transfer personal data outside Indonesia must ensure that the receiving country has a similar or higher level of personal data protection. This requirement, however, can be set aside if the data controller can ensure sufficient and binding personal data protection, or if it cannot be fulfilled, the data controller has secured consent from the data subject.

The PDP Law also introduces new requirement with respect to personal data due to corporate action. Data controllers which intend to conduct a merger, consolidation, acquisition, spin-off, or dissolution must notify data subject on the transfer of personal data before and after the completion of corporate action. The notification can be given either directly to data subject or through a newspaper announcement.

Territorial Scope and Applicability

The PDP Law applies extra-territorially, which means it not only applies within the territory of Republic Indonesia, but also apply outside Indonesia where the processing of personal data has legal impact within Indonesian territory and/or relates to Indonesian data subjects who are located outside Indonesia.

PDP Law applies to the processing of personal data by individuals, private entities, public entities, or international organization for any purpose, except in the case of personal or household activities. However, there is no further explanation on what activities are considered as “personal or household activities”.

Sanctions

The PDP Law provides two types of sanctions for violation, namely administrative sanction and criminal sanction. Administrative sanctions may be imposed due in case of violation related corporate action requirement, appointment of data protection officer requirement, and other administrative requirements. Administrative sanction can be given in the form of written warnings, temporary suspension of data protection activities, deletion of personal data, and/or administrative fines for maximum 2% of the annual revenue against the violation variable.

Criminal sanction may be imposed in case of violation of prohibition to unlawfully collect personal data with the intention to get benefit, prohibition to unlawfully disclose personal data, prohibition to unlawfully use personal data, or prohibition to make or use false personal data to benefit him/herself. The criminal sanction will be in the form of imprisonment ranging from 4 to 6 years, and/or monetary penalty of maximum IDR 6billion.

Status of Existing Regulation and Transition Period

After its enactment, the PDP Law will be the main reference for personal data matters in Indonesia, and consequently all existing laws and regulations that have certain provisions related to personal data must be brought in line with the provisions set out in the PDP Law. If there are any conflicting rules between the PDP Law and other regulations on the same subject matter, the provision of PDP Law shall prevail. The PDP Law is enforced as of the enactment date, i.e. 17 October 2022. However, the government has provided a transition period of two years for data controllers or data processors or any relevant parties to adjust their policies, practices, or internal rules in accordance with the PDP Law.

[Author]

Ichsan Montang (Nagashima Ohno & Tsunematsu Singapore LLP　Counsel)
ichsan_montang@noandt.com

Ichsan Montang is an Indonesian qualified attorney in the Singapore Office. He graduated from the University of Indonesia with Cum Laude predicate and obtained his LL.M. degree in Erasmus University Rotterdam, the Netherlands. Prior to joining NO&T, Ichsan worked at one of the most prominent law firms in Indonesia and experienced in handling both domestic and international clients. He focuses his practice on mergers and acquisitions, foreign direct investment, general corporate matters, TMT, and real estate business.

Vietnam

Amendments to the Regulations on Private Placement of Corporate Bonds

ベトナムでは近年、社債とりわけ私募債による資金調達が活発化し、ベトナム現地企業にとって重要な資金調達方法の一つとなっている。他方で、急速なマーケットの拡大に対し、透明性確保などの観点からの規制強化の必要性なども指摘されていた。こうした状況の中、政令 65/2022/ND-CP 号が本年 9 月 16 日に成立・施行された。本稿では、この政令 65 号によって改正された主な内容について概説する。

On 16 September 2022, the Government issued Decree 65/2022/ND-CP ("**Decree 65**") to amend certain provisions of Decree 153/2020/ND-CP dated 31 December 2020 ("**Decree 153**") regarding private placement of corporate bonds. Decree 65 came into effect on the same day.

Introduction

Corporate bonds have gradually become a significant channel to attract capital for Vietnamese companies. In 2021, the outstanding amount of corporate bonds in Vietnam reached 623,616 billion dong[1] (approximately USD26 billion) equivalent to 15 per cent of GDP[2] of which private placement of bonds accounted for more than 85%[3]. The rapid development of the corporate bond market (especially by way of private placement) in recent years has revealed certain problems in the legal framework under Decree 153 and therefore there was a need to strengthen the regulations. Amendments under Decree 65 are expected to create a more transparent market and to provide more protection to the bondholders[4]. We discuss certain important changes made by and issues of Decree 65 below.

Eligible bondholders

As required under the Law on Enterprises, holders of corporate bonds issued under the private placement regime (even the purchasers in the secondary market), depending on the types of bonds, must be institutional securities investors and/or strategic investors. These investors (as defined under the Law on Securities) are generally either corporate or individual investors having financial capacity and knowledge on investment in securities, including bonds. Decree 65 does not change the definitions of strategic investor[5] and institutional securities investors but provides new criteria to determine institutional securities investors. With respect to institutional securities investors, the definition continues to include entities having huge amounts of capital and/or experience in financial and securities sectors (i.e. commercial banks, securities companies, securities investment fund management companies, companies with charter capital of 100 billion dong (approx. USD4 million), persons having securities business practising certificates and individual securities investor having portfolio of at least 2 billion dong (approx. USD80,000), however, "individual securities investor having portfolio of at least 2 billion dong" is determined differently under Decree 65. Previously, the threshold of 2 billion was decided on the date of certification. Therefore, an individual could easily satisfy this requirement by having high value securities transactions in one day. Decree 65 tries to remedy this loophole by stipulating that the 2 billion threshold must be decided according to average daily transaction value of the period of at least 180 consecutive days preceding the certification date; and loan for conducting margin transactions and securities of repurchase transactions will not be counted. This change is expected to narrow the individual investors who actually have financial capacity and experience in trading securities. This certification shall be valid for only 3 months.

Purpose of Issuance

Under Decree 65, bonds can only be issued for attracting capital for investment projects, restructuring the issuer's debts or serving other purposes as prescribed in specialized laws. The purpose of bond issuance for "increasing

[1] Report of Bond Market in 2021 prepared by VNDirect Securities Joint Stock Company at https://www.vndirect.com.vn/category/bao-cao-trai-phieu/
[2] Vietnam Investment Review dated 2 November 2022
[3] Reports of Bond Market for each quarter of 2021 prepared by VNDirect Securities Joint Stock Company
[4] Decree 153 also deals with the issuance of corporate bonds in international market but provisions regarding this issuance remain unchanged.
[5] Strategic investor" is defined under Article 4.17 of Law on Securities to mean "*an investor who is selected by the general meeting of shareholders in accordance with the criteria on financial capability and technological qualifications, and is committed to cooperate with the company for a period of no less than 3 years*

the scale of operating capital" under Decree 153 was removed. Similar to Decree 153, the issuer is required to clearly indicate the purposes of the bond issuance in its issuing plan (the mandatory contents of such plan are set out in Decree 65) and disclose information to investors. However, when the bonds are issued to attract capital for investment projects, Decree 65 requires the issuer to provide more details of the project than Decree 153 did. Accordingly, other than the general information regarding the project as required under Decree 153, the issuer is now required to additionally disclose the legal basis and risks of the project. This requirement seems to aim to provide the investors more information before they decide to purchase the bonds.

More protections to investors

Representative of bondholders

One of new regulations aiming to protect the bondholders under Decree 65 is the requirement that the bond issuer must sign a contract with a representative of bondholders. Such representative needs to be a depository member of Vietnam Securities Depository and Clearing Corporation ("VSDC") (i.e. a securities company or a registered commercial bank) or securities investment fund management company. Under Decree 153, such representative of bondholders was required in public offering process only. Under Decree 65, this representative is to (i) supervise the adherence to commitments of the issuer in the bond offering application; (ii) act as the intermediary between the bondholders, the issuer and other relevant organizations; (iii) request the guarantor to fulfill the guarantor's obligations when the issuer fails to pay or properly pay the principal and interest on the bonds; and (iv) implement the notification regime.

Information Disclosure

Decree 65 provides some amendments to the requirements on information disclosure regarding the issuance. Accordingly, more information is required to be publicly disclosed (i.e. under Decree 65, reports on status of performance of commitments of the issuer, change of issuance conditions or redemption of bonds must be disclosed while Decree 153 did not require this) and the timeframe for disclosure of certain information is shortened (i.e. the issuer must provide information regarding the issuance result within 5 working days instead of 10 days as required under Decree 153).

In addition, Decree 65 requires further information to be posted in the corporate bond information webpage of the Stock Exchange[6] than Decree 153 did. Accordingly, from the effective date of Decree 65, the following information must be additionally posted:

(i) information regarding outstanding bond debts (including all types of bonds), debt to equity ratio (outstanding bond debts (including all types of bonds)/equity), interest coverage ratio (earnings before interest and taxes/interest expense); and

(ii) information about cases in which the issuer fails to make full payment of principal and/or interest amounts, or fails to use funds raised from bond issuance for the prescribed purposes, or fails to fulfill commitments to bondholders, and cases in which the issuer is required to redeem bonds.

Another new right of the bondholders is that they have the right to require the issuer to redeem the bonds in certain circumstances set out in Decree 65.

Depository and Transfer

Under Decree 153, corporate bonds issued under the private placement regime were deposited at a depository entity (e.g. securities companies or certain commercial banks) and traded among institutional securities investors except for implementation of court judgements or arbitral awards or inheritance.

Under Decree 65, corporate bonds are required to be centrally deposited at the VSDC and then these corporate bonds are expected to be traded in a central specialized system operated by the Stock Exchange among institutional securities investors. It is noted that this system would be different from the one for trading public offer corporate bonds. However, until now, this system has not been established. The VSDC and the Stock

[6] https://cbonds.hnx.vn/

Exchange have 9 months from effective date of Decree 65 to establish the necessary system for depositing and trading corporate bonds issued under the private placement regime and then the bonds must be deposited and traded in such system within 3 months.

Other than the above, there are amendments regarding par value of bonds, conditions for changing bonds conditions and redemption of bonds. Responsibilities of entities involving in the issuance and trading of corporate bonds such as advisors, agents, guarantors, VSDC and governmental authorities have also been amended.

[Author]

Long Nguyen (Nagashima Ohno & Tsunematsu HCMC Branch)
long_nguyen@noandt.com

Long specialises in foreign investment, commercial law and dispute resolution. He has 12 years of experience in assisting foreign investors and foreign invested enterprises in their investment activities in Vietnam and related operational issues, including employment relations, taxation issues, trading agreements, loans and securities. He assisted many large local enterprises and multinational enterprises in their M&A deals and their organisational restructures. He also assisted clients in commercial and labour cases before Vietnamese courts.

[EDITORS' PROFILES]

Nobuo Fukui (Nagashima Ohno & Tsunematsu Singapore LLP Partner)
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.

Motohisa Nakagawa (Nagashima Ohno & Tsunematsu HCMC Branch Partner)
motohisa_nakagawa@noandt.com

Motohisa Nakagawa is a partner at Nagashima Ohno & Tsunematsu and a representative of its Ho Chi Minh City office. He has been stationed in Vietnam since 2011 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries, especially Vietnam.

He is a graduate of Keio University (LL.B., 1999) and Stanford 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 Allens (Ho Chi Minh City) from 2011 to 2014, focusing on Vietnamese legal practice, and he has extensive legal experience in the Vietnam related transactions.

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

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

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

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