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Thailand

**Draft Legislations Relating to Skilled Persons and the Eligible Incentives under Eastern Economic Corridor (EEC) Law**

東部経済回廊法（EEC 法）上、企業幹部や専門家を対象とした外国人向けの特別なビザ（EEC ビザ）の制度や、専門的な知識や能力を有する人材のための特別なインセンティブの付与が認められている。本稿では、かかるインセンティブの詳細やその対象となる人材の範囲に関する下位規則案（本年 10 月 15 日までパブリックヒアリングに付されていたもの）の概要を紹介する。

## 1. Background

Under the Eastern Economic Corridor Act of 2018 (“**EEC Act**”), one of the incentives granted while operating businesses in the Eastern Economic Corridor (“**EEC**”) relates to the personnel working in the EEC, namely, (i) the right of the business operator to bring expatriates to work in the EEC according to Section 48(2) of the EEC Act which is emphasized through the promulgation of the new EEC notification which includes, among others, the grant of right to bring specialist, executive, or profession (including their spouse and dependent) to work in Thailand under EEC visa and work permit scheme and the Cabinet’s approval in May 2024 on the framework of EEC visa and guideline for incentives granted to the operators in Special Economic Promotional Zone in EEC, and (ii) the rights to be granted to the persons with specialized knowledge and capabilities (the “**Skilled Persons**”) working in EEC according to Section 51 of the EEC Act which shall be prescribed in a Royal Decree.

Recently, with regard to the aforementioned rights to be granted to the Skilled Persons working in EEC, aiming to encourage knowledgeable and skillful persons who can contribute to technology development and innovative creation to come and work in the Special Economic Promotional Zone in EEC, the EEC Office has prepared the draft Royal Decree prescribing the qualifications of the Skilled Persons and eligible incentives (the “**Draft Royal Decree**”). The Draft Royal Decree broadly stipulates the eligibility of the Skilled Persons who would be able to obtain incentives and the list of incentives to be granted. Also, the EEC Office further drafted the Notification of the EEC Committee on Criteria, Method and Condition of Obtainment of Incentives of Skilled Persons (the “**Draft Notification**”) which lays out conditions and details of incentives. Both Drafts stipulates that any Skilled Persons can obtain incentives without limiting nationality. It is unclear whether the EEC Policy Committee aims to grant incentives to only foreign Skilled Persons or Thai national is eligible to these incentives as well.

This article will summarize key details regarding, for instance, qualification of the Skilled Persons, incentives and conditions prescribed in the Draft Royal Decree and the Draft Notification.

**2. Key takeaways under the Draft Royal Decree and the Draft Notification**

**I. Qualifications of the Skilled Persons and conditions to obtain incentives**

The Draft Royal Decree prescribes the qualifications of the Skilled Persons who would be eligible to apply for incentives. The key qualifications are as follows:

- (a) he/she is the person who has been awarded or whose work in the field related to technology and innovation development has been accepted at a national or international level; or he/she is currently a business operator or a professional or has been a business operator or a professional in the field which is beneficial to technology and innovation development for not less than twenty (20) years and there is apparent evidence presenting such qualification; and
- (b) he/she is not a person who has worked in Special Economic Promotional Zone within the period of two (2) years before the EEC Policy Committee’s resolution to encourage such persons to work in the Special Economic Promotional Zone.

In addition to the above qualifications, among others, the Skilled Person must not be an incompetent or a quasi-incompetent or bankrupt person and must never be sentenced for imprisonment by the judgement of Thai court or court in any foreign country.

Regarding the conditions of the obtainment of incentives, under the Draft Notification, the Skilled Persons will be required to work under an employment contract with the business operator in Special Economic Promotional Zone for the period of not less than five (5) years and the payment of income shall be made in Thailand in full throughout the entire period. Additionally, the business operator is required to provide an insurance having medical coverage in Thailand for not less than USD 50,000 per annum for the Skilled Persons and their spouses, parents and children.

**II. Key incentives granted to the Skilled Persons**

The EEC Policy Committee may grant certain incentives to the Skilled Person as follows:

No.	Type of incentives	Details																											
<b>Tax incentive</b>																													
1.	Income Tax Reduction	<p>The Skilled Persons may be granted income tax reduction for the assessable income earned from employment by the business operator in Special Economic Promotional Zone. The rate is as follows:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Applicable Tax Rate</th> <th>Withholding Tax Rate</th> </tr> </thead> <tbody> <tr> <td>1<sup>st</sup></td> <td>More than 17%</td> <td>17%</td> </tr> <tr> <td>2<sup>nd</sup></td> <td>More than 16%</td> <td>16%</td> </tr> <tr> <td>3<sup>rd</sup></td> <td>More than 15%</td> <td>15%</td> </tr> <tr> <td>4<sup>th</sup></td> <td>More than 14%</td> <td>14%</td> </tr> <tr> <td>5<sup>th</sup></td> <td>More than 13%</td> <td>13%</td> </tr> <tr> <td>6<sup>th</sup></td> <td>More than 12%</td> <td>12%</td> </tr> <tr> <td>7<sup>th</sup></td> <td>More than 11%</td> <td>11%</td> </tr> <tr> <td>8<sup>th</sup> onwards</td> <td>More than 10%</td> <td>10%</td> </tr> </tbody> </table> <p>This means that, according to the above tax rate in the table, in case the income of the Skilled Persons is subject to the applicable tax rate at 17% or more, the withholding tax deducted will be at a fixed rate of 17% and the longer the Skilled Persons work in EEC, the rate of withholding tax will decrease.</p>	Year	Applicable Tax Rate	Withholding Tax Rate	1 <sup>st</sup>	More than 17%	17%	2 <sup>nd</sup>	More than 16%	16%	3 <sup>rd</sup>	More than 15%	15%	4 <sup>th</sup>	More than 14%	14%	5 <sup>th</sup>	More than 13%	13%	6 <sup>th</sup>	More than 12%	12%	7 <sup>th</sup>	More than 11%	11%	8 <sup>th</sup> onwards	More than 10%	10%
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		Furthermore, the EEC Policy Committee may exempt the Skilled Persons from accumulating income earned from work done or from assets in foreign countries for the calculation of tax.
2.	Immigration right	<p>The Skilled Persons including their spouse, parents and children (not more than 20 years of age and non-Thai) may enter and reside in Thailand for a maximum period of 20 years each time.</p> <p>For this immigration right, if granted, the EEC Office shall issue the certificate for the Skilled Persons to submit and apply for EEC-Visa.</p>
3.	Right to obtain work permit	<p>The Skilled Persons may be granted the right to work at a position related to a special target industry of not exceeding 10 years each time.</p> <p>If granted, the Secretary of the EEC Policy Committee shall issue EEC-Work Permit to the Skilled Persons for the period not exceeding 10 years and notify the permission to the Department of Employment.</p>
4.	Ownership of property	<p>The Skilled Persons may be granted:</p> <ul style="list-style-type: none"> <li>• the right to own land in EEC for residential purpose of not exceeding 1 Rai (equivalent to 1,600 square meters).</li> <li>• the right to own condominium unit in EEC for residential purpose, with an exemption from the restriction of a foreigner's right under the condominium law.</li> <li>• the right to own Thai-registered vessel and registered aircraft.</li> </ul>
5.	Lease right	The Skilled Persons may be granted the right to lease, sub-lease land or immovable property in EEC for residential purpose for a period not exceeding 50 years and may extend the lease term for additional 49 years after the 50-year period lapses.
6.	Exemption from registration fee	<p>The Skilled Persons may be exempted from the registration fee for the acquisition of the moveable and/or immovable property under item nos. 4 and 5 above.</p> <p>For this exemption, under the Draft Notification, the Skilled Person is required to apply to the EEC Office and if granted, the EEC Office will issue the certificate to the Skilled Person and notify relevant authority (e.g. Land Department) for the exemption of registration fee.</p>
7.	Refund of excise tax	<p>The Skilled Persons may receive refund of an actual amount of excise tax for the following purchases:</p> <ul style="list-style-type: none"> <li>• A car not exceeding THB 1,000,000; or</li> <li>• A yacht and marine vehicle used for leisure purpose not exceeding THB 5,000,000.</li> </ul> <p>Under the Draft Notification, it shall be a car manufactured in Thailand (excluding car assembled from used-parts imported from overseas). In addition, the Skilled Person must possess car, yacht or marine vehicles for not less than 5 years and the excise tax will be refunded after the possession of 1 year.</p>

### 3. Conclusion

The Draft Royal Decree and the Draft Notification are expected to attract persons with knowledge and skills to come work in the EEC in order to enhance the ability not only to compete among target industries in Thailand but to compete with other countries in the region. The Draft Royal Decree and the Draft Notification have undergone public hearing process from 24 September 2024 to 15 October 2024. Both Drafts involve other government authorities such as the Land Department, Customs Department, Immigration Bureau and there may be sub-regulation issued thereunder.

[Authors]



**Poonyisa Sornchangwat** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

poonyisa\_sornchangwat@noandt.com

Poonyisa is a Thai qualified lawyer and notarial services attorney based in the Bangkok office. She has provided support to local and multinational corporate clients in several domestic and cross-border projects and transactions. Her practice areas cover corporate, M&A, joint venture, data protection, and legal compliance.



**Kwanchanok Jantakram** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

kwanchanok\_jantakram@noandt.com

Kwanchanok graduated with a Bachelor of Law from Thammasat University in 2016 and obtained an LL.M. from Waseda University in 2020. She has represented local and multinational companies in various corporate projects and commercial transactions such as M&A, foreign investment law, financial regulation etc.

## Philippines

**Philippines: Guidelines on Merger Remedies**

2024年5月フィリピン競争委員会は、申請された企業結合が市場における競争を実質的に制限する可能性がある場合の救済措置に関するガイドラインを発行した。このガイドラインは、競争を実質的に制限する企業結合に関しても、一定の救済措置を併せて実施することによりクリアランスが得られる可能性を付与するもので、企業結合届出実務における重要性が高いガイドラインであることから本稿で紹介する。

On 9 May 2024, the Philippine Competition Commission (“**PCC**”) approved and issued the Guidelines on Merger Remedies (“**Guidelines**”) pursuant to its mandate to review and assess whether a proposed merger or acquisition is likely to substantially prevent, restrict or lessen competition (“**SLC**”) in the relevant market.

The Guidelines are significant because while the Philippine Competition Act generally prohibits mergers and acquisitions that would result in SLC, it grants the PCC authority to consider and accept merger remedies that addresses the identified SLC or anti-competition concerns, thereby allowing parties the opportunity to propose remedies and giving such transactions (as modified or remedied) a chance to still proceed.

**Key points of the Guidelines***1) Basic considerations for choice and design of merger remedies*

The Guidelines stipulate that the proposed merger remedies must be directed and tailored to address competitive harm identified during the merger review. It must be effective and proportionate, and in evaluating the proposed remedies, the PCC will take into consideration the particular facts of the case and examine parameters such as: (a) acceptable risk profile (i.e., likelihood of achieving the objective of addressing the SLC and corresponding adverse effects), (b) practicality in implementation, monitoring and enforcement, and (c) duration and timing (i.e., whether it immediately and decisively resolves the SLC).

*2) Principal types of merger remedies*

The Guidelines identify and distinguish the two broad types of merger remedies that may be proposed by parties, which are (a) structural remedies, and (b) behavioral remedies.

Structural remedies are described as those which affect the market structure by either creating, restoring or maintaining an entity that will compete independently. An example of a structural remedy under the Guidelines is the divestiture (sale) of appropriate business units or assets of the merged entity to a new or existing market participant. The Guidelines recognize that structural remedies have the advantage of being self-policing (not requiring active monitoring) and provide direct and lasting effects in the market by addressing the root cause of competitive harm.

On the other hand, behavioral remedies address the SLC by regulating the post-transaction conduct of parties, such as by restricting the conduct of the merged entity (e.g., not to exercise its enhanced market power post-transaction to foreclose rivals). In proposing behavioral remedies, the Guidelines state among others that:

- (a) The parties must provide information on “design” of the behavioral remedies (e.g., the harm it intends to eliminate, the implementation plan, and details as to duration of the implementation, specific performance metrics, reports and other proofs of compliance, frequency and period of submission of compliance reports, etc.)
- (b) The terms are readily and affordably monitored, and there is a straightforward punishment mechanism that will act as a strong deterrent against breach by the parties
- (c) The adoption of behavioral remedies has more benefits than structural remedies, or where structural remedies are not feasible

Parties are also encouraged to include ancillary measures to ensure the effectiveness of their proposed remedies (e.g., steps to be complied with before, during or after the implementation of the remedies).

Nevertheless, it should be noted that the Guidelines are not intended to be exhaustive and acknowledges that each transaction should be assessed individually to determine the appropriate remedies. Overall, greater preference will be given by the PCC to remedy packages that preserve competition and merger-specific efficiencies that will benefit consumers.

### 3) Remedies in digital markets

Considering the unique dynamics and characteristics of the digital market, the Guidelines recognize other types of remedies available to address potential SLC in the digital market, such as:

- (a) Firewall provisions, which restrict access and sharing of competitively sensitive information to avoid collusion. This may be implemented through non-disclosure agreements or through separate IT access in case of a vertical merger.
- (b) Research and development commitments of the merged entity, which will address concerns that the merged entity may have lesser motivation (e.g., due to market dominance) to develop new products for customers.
- (c) Access provisions, which require the merged entity to allow other market participants to access certain key technologies, data, network or infrastructure.
- (d) Mandatory licensing provisions, which require the merged entity to license certain know-how and intellectual property rights to eligible and interested third parties.

### 4) Timing and evaluation of merger remedies

Before the PCC reaches a decision in the merger review process, the parties are encouraged and may submit voluntary commitments to address the SLC and corresponding harms arising from the merger. Submission of the proposed commitments will result in the merger review periods being suspended for a period of 60 days (which may be shortened or extended) subject to compliance with formalities.<sup>1</sup>

The PCC will evaluate the proposed commitments and thereafter discuss and negotiate with the parties on the most suitable merger remedy.<sup>2</sup> The PCC may resort to market testing (e.g., consultation with various stakeholders, subject to protection of confidential information) to gather data and insights on the viability of the proposed remedies. Should the PCC decide that changes need to be made to the commitment based on responses from stakeholders, then it will discuss the material changes with the parties.<sup>3</sup>

Note that for multijurisdictional mergers and acquisitions, the Guidelines state that the PCC will cooperate with competition and regulatory agencies outside the Philippines to avoid inconsistencies and conflicts and may exchange non-confidential information with such competition and regulatory agencies in the process.

Notwithstanding the proposals from parties<sup>4</sup>, the PCC also has the discretion to consider and impose alternative remedies and if the PCC is unable to conclude that the proposed remedies are sufficient to address the SLC, the merger review process will resume.

<sup>1</sup> Section 12.4, PCC Rules on Merger Procedure.

<sup>2</sup> Review will be done by the Mergers and Acquisition Office (“MAO”) of the PCC if the remedies are proposed prior to the issuance of Statement of Concerns (referring to the document setting forth the findings of the MAO on the likelihood of the merger giving rise to SLC, which may include any recommendations or remedial actions that the MAO proposes to apply), or by the Voluntary Commitment Review Team to be constituted by the PCC if the remedies are proposed after the issuance of the Statement of Concerns.

<sup>3</sup> Section 12.5.4, PCC Rules on Merger Procedure.

<sup>4</sup> Section 12.5.5, PCC Rules on Merger Procedure.



### 5) *Implementation and monitoring of merger remedies*

The parties are primarily responsible for implementing merger remedies approved by the PCC. However, the PCC may also appoint an impartial third-party monitoring trustee (at the expense of parties) to independently monitor the parties' compliance with its commitments.

Parties may file a written application to vary, substitute or release them from the commitments in accordance with the PCC Rules on Merger Procedure, for reasons such as factual or legal circumstances beyond their control, or occurrence of significant or permanent changes in market conditions which diminish the initial competition concerns.

#### **Conclusion**

By preparing such Guidelines, the PCC provides insight and transparency on how it will evaluate the appropriateness and sufficiency of proposed merger remedies, which will in turn assist parties in considering options to mitigate or prevent the SLC and other negative effects to competition which may have otherwise prevented the PCC from approving their transaction. Hence, for parties to a merger which may result in SLC, they should familiarize themselves with the Guidelines so they can be guided in formulating and designing suitable and effective merger remedies that will address the PCC's concerns.

[Author]



**Patricia O. Ko** (Nagashima Ohno & Tsunematsu Singapore LLP Counsel)  
patricia\_ko@noandt.com

Patricia O. Ko is a Philippine qualified lawyer 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 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.



**Shohei Sasaki** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd. Partner)

shohei\_sasaki@noandt.com

Shohei Sasaki is a partner at Nagashima Ohno & Tsunematsu and the head of Bangkok office. He has been stationed in Bangkok since 2011 and supporting Japanese and other multinational corporate clients. His practice includes corporate, M&A, joint venture, corporate finance, restructuring, real property development, energy, infrastructure, data protection, compliance and crisis management. He also represents Thai and multinational corporate clients in their investments in Japan, particularly on renewable energy and real property projects.



**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.



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[www.noandt.com](http://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](mailto:info@noandt.com)



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### Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41  
 Singapore 049909  
 Tel: +65-6654-1760 (general)  
 Fax: +65-6654-1770 (general)  
 Email: [info-singapore@noandt.com](mailto:info-singapore@noandt.com)

### Bangkok Office

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



34th Floor, Bhairaj 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](mailto: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](mailto: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](mailto:info-hanoi@noandt.com)

### Jakarta Office (\*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401  
 Jalan Jenderal Sudirman Kav. 40-41  
 Jakarta 10210, Indonesia  
 Tel: +62-21-25098080 (general)  
 Fax: +62-21-25098090 (general)  
 Email: [info-jakarta@noandt.com](mailto:info-jakarta@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](mailto:info-shanghai@noandt.com)

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