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## **COVID-19: Guidance for Businesses in Asia HR & Corporate Compliance in Indonesia, Malaysia, Myanmar, Singapore, Thailand and India**

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# Executive Summary of COVID-19 Government Support Measures

Type of Support	Indonesia	Malaysia	Myanmar	Thailand	Singapore
<b>Policy Rates</b>	<ul style="list-style-type: none"> <li>Bank Indonesia (BI) has cut its benchmark rate by 25 basis points to 4.5%</li> <li>Budget deficit cap of 3% was lifted to 5% until 2022 for the first time since 1998 in order to enable higher government spending</li> </ul>		<ul style="list-style-type: none"> <li>Central Bank of Myanmar has cut its interest rates</li> <li>Annual interest rate: 8.5%</li> <li>Minimum bank deposit rate for savings deposits, savings certificate and time deposits: 6.5%</li> <li>Maximum lending rate for loans with collateral: 11.5%</li> <li>Maximum lending rate for loans without collateral: 14.5%</li> </ul>	<ul style="list-style-type: none"> <li>Bank of Thailand (BOT) reduced its policy rate to 0.75%</li> </ul>	
<b>Large Scale Asset Purchase</b>	<ul style="list-style-type: none"> <li>The government has the authority to issue state bonds or sharia sovereign bonds with specific purpose</li> <li>BI, state-owned companies, corporate investors and/or retail investors are allowed to purchase the bonds.</li> </ul>			<ul style="list-style-type: none"> <li>Stabilisation fund: government bond purchase of more than THB 100 billion</li> <li>Bond mutual funds: BOT has set up a facility to provide liquidity for mutual funds through commercial banks</li> <li>Corporate bonds: THB 70 billion to THB 100 billion fund invest in high-quality, newly issued bonds by corporates which can't fully roll over maturing bonds</li> </ul>	
<b>Liquidity Support (Lending Facilities)</b>	<ul style="list-style-type: none"> <li>Provision for credit payment obligations has been loosened until 31st March 2021</li> <li>BI has the authority to issue sharia short-term liquidity loans or financing for systemic or non-systemic banks</li> <li>BI may give special liquidity loans to systemic banks which are not eligible to the sharia short-term liquidity loans</li> <li>The government has the authority to make use of funds sourced from a reduction of capital of state owned-enterprises</li> <li>Regional governments have the option to reassess and reallocate their budgets</li> </ul>	<ul style="list-style-type: none"> <li>MYR 50 billion guarantee scheme with a government guarantee up to 80% of the amount of the loan (min MYR 20 billion)</li> <li>Special Relief Facility: SME working capital loan capped at MYR 1 million at an interest rate up to 3.5% per annum (available until 31 December 2020)</li> <li>All Economic Sectors Facility: SME working capital or expenditures loan capped at MYR 5 million at an interest rate up to 7% per annum</li> <li>Automation and Digitalisation Facility: SME loan capped at MYR 3 million at an interest rate of 4% per annum (available until 31 December 2020)</li> <li>Agrofood Facility: SME loan capped at MYR 5 million at an interest rate up to 3.75% for a maximum tenure of 8 years</li> <li>Micro Enterprises Facility: working capital or expenditure loan capped at MYR 500,000 at an interest rate determined by the bank</li> <li>SME six-month Loan Deferment Package</li> <li><i>BizMula-i</i> and <i>BizWanita-i</i> schemes: financing scheme for SMEs in operation for less than 4 years between MYR 30,00 and MYR 300,000</li> </ul>	<ul style="list-style-type: none"> <li>Creation of COVID-19 fund and soft loans to Myanmar citizens and Myanmar-owned companies of MMK 100 billion (USD 72 millions) to assist the following sectors: Cut Make and Pack, Hotel and Tourism and SMEs The interest rate is of 1% with a term of 1 year</li> </ul>	<ul style="list-style-type: none"> <li>Business loans: seizing capital payment capital and interest payments up to 6 months</li> <li>THB 1.6 billion to compensate savings banks and bank for agricultural cooperatives for granting low interest loans at 0.1% per month</li> </ul>	<ul style="list-style-type: none"> <li>Enterprise Financing Scheme – SMEs Working Capital Loan: loan up to SGD 1 million for a maximum period of 5 years with a government risk-share of 90% with the possibility to request the deferment of the principal repayment for 1 year</li> <li>Enterprise Financing Scheme – Trade Loan: loan up to SGD 10 million for a maximum period of 1 year with a government risk-share of 90%</li> <li>Temporary Bridging Loan Programme: loan up to SGD 5 million with an interest capped at 5% per annum, a government risk-share of 90% and the possibility to request the deferment of the principal repayment for 1 year</li> <li>Loan Insurance Scheme: 80% of the insurance premium of the loan is supported by the government</li> </ul>



# Executive Summary of COVID-19 Government Support Measures

Type of Support	Indonesia	Malaysia	Myanmar	Thailand	Singapore
<b>Liquidity Support (Lending Facilities)</b>		<ul style="list-style-type: none"> <li>Micro Credit Scheme: SME loan capped at MYR 75,000 under <i>the Bank Simpanan Nasional</i> or MYR 10,000 under <i>TEKUN Nasional</i> at an interest rate of 0%</li> <li>PRIHATIN Special Grant of MYR 3,000 for micro enterprises</li> <li>Encouragement to moneylenders to grant 6 months' moratorium from April 2020</li> <li>Discounts or waiver of rent for SMEs renting premises owned by government-linked companies</li> </ul>			
<b>Bridging Measures and Tax/Tariff support for Businesses</b>	<ul style="list-style-type: none"> <li>Reduction of CIT to 22% in 2020-2021 and to 20% in 2022</li> <li>Exemption of CIT on importation and reduction of monthly payment of CIT between 25% and 50% for KLU qualified taxpayers, KITE and KITE IKM until September 2020</li> <li>VAT refunds for KLU qualified taxpayers and KITE from April to September 2020 (no limit for exporters, max IDR 5 million for non-exporters)</li> <li>Exemptions/reliefs of import duty on goods used to handle the COVID-19 outbreak</li> <li>Personal income tax for employees with an income of not more than IDR 200 million will be exempt for those working for KLU Qualified Taxpayers as well as holders of KITE or KITE IKM</li> </ul>	<ul style="list-style-type: none"> <li>Discount on electricity bills from 1 April to 30 September 2020:               <ul style="list-style-type: none"> <li>15% for hotel operators, travel agencies, local airlines' offices, shopping malls, convention centres, theme parks</li> <li>2% for commercial, industrial and agricultural premises</li> </ul> </li> <li>Tax deduction up to MYR 300,000 on expenditures in renovation/refurbishment of business premises</li> <li>Accelerated capital allowance for qualifying capital expenditures on machinery and equipment (including ICT equipment)</li> <li>Waiver of listing fees for companies seeking to be listed on the LEAP or ACE markets and companies with market capitalisation of less than MYR 500 million seeking listing on the main market</li> <li>Stamp duty exemption on restructured/rescheduled loan agreement</li> <li>Tax deduction for expenses incurred by companies in providing employees with disposable personal protective equipment (PPE). Expenses for non-disposable PPE can be claimed as capital allowance</li> <li>Tax deduction for the landlord in exchange for reducing an SME's rent</li> <li>Deferment of income tax instalments payments for               <ul style="list-style-type: none"> <li>SMEs from April to June 2020</li> <li>Businesses in the tourism industry from April to September 2020</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Extension of the deadline for the payment of the CIT for the first and second quarters to end of September 2020 for the following sectors: Cut Make and Pack, Hotel and Tourism and SMEs</li> <li>Extension of the deadline for the payment of the commercial tax for the period between April and August 2020 until September 2020 for the following sectors: Cut Make and Pack, Hotel and Tourism and SMEs</li> <li>Exemption from payment of 2% advance income tax on exports up until end of September</li> </ul>	<ul style="list-style-type: none"> <li>Withholding tax on the payments made for some services from April to September 2020 reduced from 3% to 1.5%</li> <li>Extension for CIT returns and filing for 2019 until end of August 2020</li> <li>Extension of half year CIT returns and filing for 2019 until end of September 2020</li> <li>Extension of the application deadline for CIT exemption privileges to end of July 2020</li> <li>Extension for the filing of VAT and SBT returns case-by-case</li> <li>Reduction of the electricity fee of 3% from April to June 2020</li> </ul>	<ul style="list-style-type: none"> <li>Corporate income tax (CIT) rebate of 25% capped at SGD 15,000 will be granted for Year of Assessment (YA) 2020</li> <li>2 months extension of instalment payments and 3 months deferment of income tax payable</li> <li>Carry back of the unabsorbed capital allowances and trade losses for up to 3 years</li> <li>Option to accelerate write-off of the cost of acquiring plant and machinery for over 2 years and deduction of expenses incurred on renovation and refurbishment in one year</li> <li>Property Tax rebate of 1000% for certain commercial properties badly affected by the COVID-19 outbreak between 1st January 2020 and 31st December 2020</li> </ul>

# Executive Summary of COVID-19 Government Support Measures

Type of Support	Indonesia	Malaysia	Myanmar	Thailand	Singapore
<b>Bridging Measures and Tax/Tariff support for Businesses</b>		<ul style="list-style-type: none"> <li>Other businesses may revise the amount of income tax imposed in the third, sixth and ninth instalments</li> <li>Exemption from levying Service Tax for hotels from 1 March to 31 August 2020</li> <li>Double tax deduction for hotel operators' training expenses</li> <li>Import duty and Sales Tax exemption on equipment and machinery for port operators</li> <li>Double deduction on pre-commencement expenditure for setting up a regional office of an international shipping company in Malaysia                             <ul style="list-style-type: none"> <li>SMEs from April to June 2020</li> <li>Businesses in the tourism industry from April to September 2020</li> </ul> </li> <li>Other businesses may revise the amount of income tax imposed in the third, sixth and ninth instalments</li> <li>Exemption from levying Service Tax for hotels from 1 March to 31 August 2020</li> <li>Double tax deduction for hotel operators' training expenses</li> <li>Import duty and Sales Tax exemption on equipment and machinery for port operators</li> <li>Double deduction on pre-commencement expenditure for setting up a regional office of an international shipping company in Malaysia</li> </ul>			
<b>Financial and other Stimulus</b>	<ul style="list-style-type: none"> <li>Import of medical devices and personal protection equipment facilitated</li> <li>Health certificates and legal documents no longer required</li> <li>Simplification of import activities by reduction of restrictions on some products (raw materials, steel, food products etc.)</li> <li>Acceleration of the export and import process: auto responses/approvals and surveyor's reports for "reputable traders" (as of 13th March: 735 reputable traders and 626 companies ).</li> </ul>	<ul style="list-style-type: none"> <li>Wage Subsidy Program: wage subsidy of MYR 1,200, MYR 800 or MYR 600 per month and per local employee earning less than MYR 4,000 depending on the company's number of employees</li> <li>Exemption of Human Resource Development Fund levy from April to September 2020</li> <li>25% reduction of foreign workers levy for companies with foreign workers permits expiring between 1 April and 31 December 2020</li> <li>Employers Advisory Services to assist employers to restructure EPF contributions schedule or stagger payments</li> </ul>	<ul style="list-style-type: none"> <li>Deferment of deadline for payment of social security contributions for employers and employees from 15 days to 3 months after end of each month</li> <li>Some township tax officers allow employers to file and pay the April PIT for their employees together in May</li> </ul>	<ul style="list-style-type: none"> <li>Employers financial support of THB 5,000 per month during 3 months</li> <li>Reduction of the rate of the social security contributions made by the employer from 5% to 4% and by the employee to 1%</li> <li>Extension of the payment deadline for the social security contributions</li> </ul>	<ul style="list-style-type: none"> <li>Jobs Support Scheme: cash grant of 25% (75% in April 2020) of the first SGD 4,600 of the gross monthly wages of all Singaporeans and Permanent Residents employees for 9 months (higher support rates for businesses of severely affected industries such as tourism and aviation industry)</li> <li>Wage Credit Scheme: 15% to 20% government co-funding of the Singaporeans' wage increases in 2019/2020 earning up to SGD 5,000</li> <li>Support for Self-Employed Persons: 3 quarterly cash pay-outs of SGD 3,000</li> <li>Quarantine Order Allowance: SGD 100 per day per employee for the duration of the quarantine</li> </ul>

# Executive Summary of COVID-19 Government Support Measures

Type of Support	Indonesia	Malaysia	Myanmar	Thailand	Singapore
<b>Financial and other Stimulus</b>	<ul style="list-style-type: none"> <li>Improvement and acceleration of the export/import process through the development of the National Logistic Ecosystem (NLE). The NLE is a platform facilitating the collaboration between the government and private agencies to synchronize the information/documents and eliminate repetition/duplication during export/import process</li> <li>Religious holiday allowance (extra month of salary) remain payable by the employer but can be paid in stage or instalments if the company cannot pay it in full</li> </ul>	<ul style="list-style-type: none"> <li>Employment Retention Program: monthly allowance of MYR 600 paid to employees earning less than MYR 4,000 and placed on unpaid leave for at least 30 days and up to 6 months</li> </ul>			<ul style="list-style-type: none"> <li>LOA/SHN Support Programme: SGD 100 per day per employee for the duration of the LOA/SHN</li> <li>3 months extension of the levy payment timeline for foreign</li> <li>Levy waiver for up to 90 days for foreign workers on overseas leave</li> <li>Man-Year Entitlement refund for affected construction companies</li> </ul>

# I. Indonesia

## A. Overview

The Indonesian government and administration have taken various measures in reaction to the current spread of COVID-19. As will become clear from the below, many of these measures remain strong suggestions and/or require further implementing measures in order to take a concrete shape.

On March 13, 2020, the Indonesian government established the COVID-19 Mitigation Task Force, as stipulated by Presidential Decree No. 7/2020.

On March 24, 2020, The COVID-19 Mitigation Task Force was reorganized via Presidential Decree No. 9/2020, with Finance Minister Sri Mulyani appointed as Secretary to the Task Force.

An emergency period of 91 days, effective until May 29, 2020, was declared by the Indonesian National Board for Disaster Management.

The Indonesian government has suspended the granting of Visit Visa Exemptions and Visa on Arrival to foreign visitors from any country. Other visits to Indonesia on valid visa issued by an Indonesian representative in their country are subject to satisfying several requirements provided under the Indonesian Minister of Law and Human Rights ("MOLHR") Regulation No. 8 of 2020 on the Temporary Termination of Visit Visa Exemption and Visa on Arrival and the Granting of Emergency Stay Permits ("MOLHR/Reg/8/2020"). This does not apply to foreign visitors who have travelled to certain areas/countries (specifically Daegu City and Gyeongsangbuk-do Province in South Korea, China, Iran, Italy, the Vatican, Spain, France, Germany, Switzerland and the United Kingdom) within 14 days before arriving in Indonesia. Generally, foreign citizens are at risk to be denied entry upon arrival in Indonesia or granted entry under strict quarantine conditions.

## I. Emergency Stay Permits

In order to address the issue of foreign citizens that are in Indonesia but are unable to leave the country due to travel restrictions, the MOLHR issued Regulation No. 7 of 2020 on the Granting of Visa and Stay Permits in Order to Prevent the Coronavirus Outbreak ("MOLHR/Reg/7/2020"). It stipulates that an Emergency Stay Permit is applicable to (a) any foreign citizen currently in Indonesia; (b) foreigners who hold a stay permit of another country; or (c) the spouse or child of a citizen of a country other than Indonesia whose visa (any visa) (i) has completely expired and can no longer be extended, and (ii)

cannot fly back to their country due to COVID-19 situation. The corresponding Director General of Immigration Circular Letter No. IMI-GR.01.01-2114/2020, clarifies that the procedure for the granting of Emergency Stay Permits will differ based on whether the foreign citizen arrived in Indonesia before or after February 5, 2020. While those having arrived after February 5, 2020 are deemed to have obtained Emergency Stay Permits, foreign citizens that arrived before 5th February are not eligible for Emergency Stay Permits and could face overstay fees for any period not covered by valid visa.

MOLHR/Reg/7/2020 and MOLHR/Reg/8/2020 also include exceptions and procedures for extending an ITAS/ITAP permit for holders currently in Indonesia or abroad. While holders of such permits currently abroad may be granted re-entry permits, despite their permit expiring soon, applicants for extensions that are currently in Indonesia, will be granted such extensions without having to leave the country; even in cases that require all or part of the procedure to be finished at Indonesian Embassies or Consulates abroad. It is currently practically impossible to initiate applications for new work and stay permits due to the closure of all main functions of immigration authorities in Indonesia.

## II. Quarantine

On March 31, 2020, President Joko Widodo publicly announced that the COVID-19 pandemic is a national public health emergency and that the government would be issuing large-scale social restriction (Pembatasan Sosial Berskala Besar or "PSBB") policies to combat COVID-19. The President further signed a Government Regulation as well as a Presidential Decree in order to further detail the measures. These include instructions to local governments to take actions to enforce the PSBB, policy and empowerment to police and other law enforcement agencies to implement such measures. Any such measures will be addressed in further detail below.

Under Indonesian Law No. 6 of 2018 on Health Quarantine ("Law 6/2018"), various types of actions, including PSBB and quarantines may be taken by the government to prevent the spread of a disease and/or any other health risk. While many regional governments and municipalities in Indonesia had taken actions such as urging the population to practice social distancing, school closures, limitation of gatherings etc., official measures under Law 6/2018 became valid options only after the declaration of a national public health emergency by President Joko Widodo on March 31, 2020.

Health quarantine measures under Law 6/2018 can take the form of individual or aerial quarantine, isolation, vaccination, referral hospital identification, disinfection and decontamination of a person, and massive social restriction. A compulsory lockdown as currently applied in many countries around the world would be considered a general house quarantine under Law 6 /2018. During a house quarantine, the inhabitants are prohibited from leaving their homes. In an aerial quarantine people are not permitted to enter into or travel outside of the designated area while the people living inside such area may travel within its borders. Until now it has been the express position of the Indonesian government, that it will not impose lockdowns or forbid the annual exodus of people travelling to their hometowns at the end of the Muslim fasting month of Ramadhan, however the highest possible social distancing is encouraged while people are discouraged from travelling to their hometowns.

The authority to declare quarantine measures or rather to empower regional governments to implement such, lies with the Minister of Health as per Law 6/2018. The Minister first used his authority by issuing Ministry of Health Regulation No. 5 of 2020 ("MoH/Reg/5/2020") on April 5, 2020. MoH/Reg/5/2020 sets out the necessity to implement PSBB measures on the level of governors, regents and mayors, while requiring these administrative bodies to obtain the approval of the Ministry of Health for their individual plans. It serves as a mere guideline for such measures to be implemented. The measures are however to include at least:

- study and work from home;
- restrictions of religious activities;
- restrictions on activities in public areas or facilities;
- restrictions on social and cultural activities;
- restrictions on modes of transportation.

Certain businesses are specifically excluded from the implementation of PSBB policies:

#### Commerce

1. Retailers of food and basic needs;
2. Banks, insurance, payment system operators, and ATMs;
3. Print and electronic media;
4. Telecommunications, internet services, broadcasting and cable services;
5. Shipment of all food and food items or basic goods and important goods;

6. Gas stations, LPG, retail outlets and Oil and Gas storage;
7. Power plants, transmission and distribution units and services;
8. Capital market services as determined by the Jakarta Stock Exchange;
9. Freight forwarding services, including application-based with two-wheeled transportation facilities which still be restricted to transporting passenger and be allowed to only transporting goods;
10. Cold storage services;
11. Private security services.

#### Industrial companies and production activities

1. Production units of essential health commodities.
2. Production units that require a continuous process (after obtaining a permit from the Ministry of Industry).
3. Production of oil and gas, coal and minerals and mining activities.
4. Manufacture units of packaging material for food, medicine, pharmaceuticals and medical devices.
5. Staple and horticultural farming activities.
6. Export goods production unit.
7. Production unit of agricultural goods, plantations, as well as the production of micro small and medium businesses.

#### Logistics and transportation companies

1. Land transportation companies for materials and food goods or basic goods as well as important goods, export and import goods, logistics, distribution, raw materials and supporting materials for industries and micro small and medium businesses.
2. Shipping and aviation companies for the transportation of goods.
3. Transportation management and postal service company.
4. Warehousing service companies including cold chain.

The aforementioned business shall use a minimum number of employees and prioritize efforts to prevent the spread of COVID-19. The Ministry of Health has approved the plan of the special administrative area of the capital Jakarta to implement PSBB from Friday, 10th of April 2020 onwards.

## **B. Government Support Measures**

Indonesia has so far been hailed for its economic response to the situation, while the medical response has been widely

criticized. The testing capacities and medical facilities in the country are in no condition to handle the COVID-19 outbreak in any manner comparable to the situation in e.g. Singapore or Malaysia. Presidential Regulation in Lieu of Law No. 1 in 2020 ("Pres/Reg/1/2020"), included a statement, according to which significant expansions of the country's social safety net were to be made and that fiscal regulations would be eased in order to adequately react to the situation. The government has since allocated a total of IDR 405.1 trillion (i.e. roughly USD 24.7 billion) to the fight against the spread and consequences of COVID-19. Indonesia's budget deficit cap of 3% was lifted to 5% until 2022 for the first time since 1998 in order to enable the measure. The Indonesian Central Bank, Bank Indonesia ("BI") has reduced its benchmark rate by 25 basis points to 4.5%, which is a significant move judging by BI's generally conservative approach in terms of rate reductions. The government projects that Indonesia's economy could grow significantly slower by 2.3% this year and could even contract by 0.4% in its projected worst-case scenario from 5.3% growth originally presumed in the 2020 state budget.

## **I. Bond Market**

Art. 2 (1) (f) of Pres/Reg/1/2020 states that the government has the authority to issue state bonds or sharia sovereign bonds with a specific purpose, specifically to deal with the COVID-19 pandemic, and the bonds can be purchased by BI, state-owned companies, corporate investors and/or retail investors. Accordingly, Art. 16 (1) (c) allows BI to purchase the bonds in the primary market. BI is generally prohibited from buying government bonds except in the secondary market. Proceeds from bonds sales are to be used by the government for national economic recovery and to finance banks' restructuring where necessary.

## **II. Loan Market**

Indonesia's financial authority, Otoritas Jasa Keuangan ("OJK"), has loosened the provision for credit payment obligations for the banking sector as well as multi finance companies. The respective OJK regulation No. 11/POJK.03/2020 ("Reg/OJK/03/2020") will be in effect until March 31st 2021. In general, Reg/OJK/03/2020 aims to provide guidance in the form of a framework for banks to adjust and implement their procedures specifically for their debtors, including micro, small and medium size borrowers, that are affected by COVID-19 whether directly or indirectly.

While Reg/OJK/03/2020 expressly states tourism, transportation, hotel, trading, processing, agriculture and mining as affected sectors, the wording used does not limit the scope in terms of debtor or loan type. There is no requirement for banks to submit or obtain approval from OJK regarding their implementation. Typical examples of debtors that can be deemed as an affected debtor under Reg/OJK/03/2020 include:

1. debtors affected by the closing down of a transportation line and tourism from and to China or other countries affected by COVID-19 and/or travel warnings;
2. debtors hit by a significant decrease of import/export volume due to the connectivity of supply chains and trading with China or other countries affected by COVID-19; and
3. debtors affected by the delay in infrastructure project development due to the cessation of raw material, labor and machinery supplied from China or other countries affected by COVID-19. It is likely that banks will have room to extend the benefits to debtors that suffer from the COVID-19 outbreak more indirectly than outlined above.

## **III. Liquidity Loans from BI to Systemic Banks**

In Art. 16 of Pres/Reg/1/2020, BI is given the authority to issue sharia short-term liquidity loans or financing for systemic or non-systemic banks facing liquidity problems. Further, BI may give special liquidity loans to systemic banks that face liquidity issues but are not eligible for the sharia short-term liquidity loans. Further schemes and mechanisms for disbursing the special liquidity loans will be jointly regulated by the Minister of Finance and the BI governor.

## **IV. Reduction of Capital Injections for State Owned Enterprises**

The Indonesian government has the authority to use funds sourced from a reduction in state capital injections (PMN) for state-owned companies to meet state budget needs as per Art. 2 (1) (e), (5) of Pres/Reg/1/2020.

## **V. Regional Treasury**

It is a declared goal of the Home Minister that regional leaders focus on sustaining the economy and containing COVID-19 when allocating their budgets. Pres/Reg/1/2020 gives regional administrations the option to re-evaluate the use of their budgets in order to adequately react to the situation.



## **VI. Simplification of Administrative Procedures for Import and Export Activities**

In order to simplify procedures and thereby provide stimulus to the import and export sectors as well as to ease the procurement of vital goods in fighting COVID-19, a number of restrictive procedures have been relaxed:

1. The Ministry of Trade has relaxed the importation of medical devices and personal protection equipment through Trade Minister Regulation No. 28/2020, which amends Trade Minister Regulation No. 87 M-DAG/PER/10/2015 on the requirements on importation of certain products, valid until June 30th 2020.
2. Health certificates and legal documents are no longer required unless needed by exporters. There will be a reduction of prohibitions and restrictions of 749 HS codes, which consist of 443 HS codes for fish commodities and products, and 306 HS codes for forestry products.
3. Simplification of import activities by reduction of restrictions, specifically for raw materials, in order to increase their availability. This stimulus is provided to producers and will initially be applied to steel, steel alloys and their derivative products, which will be followed by strategic food products such as industrial salt, sugar, and flour.
4. Acceleration of the export and import process in the form of auto responses and auto approvals for export regulations and surveyor's reports for reputable traders, namely companies related to export-import activities that have a high level of compliance. As of March 13th, there were 735 reputable traders that consist of 109 Authorized Economic Operators (AEO) and 626 companies that are categorized as main partners of customs (Mitra Utama Kepabeanan - MITA).
5. Improvement and acceleration of export-import process services through the development of the National Logistics Ecosystem ("NLE"). The NLE is a platform that facilitates the collaboration of information systems between government and private agencies to simulate and synchronize the flow of information and documents in export/import activities at ports and trade activities/distribution of domestic goods through data sharing, business process simulations, and elimination of repetition and duplication.

## **VII. Tax Measures**

The Ministry of Finance has announced a number of tax holidays for certain businesses and individuals as a form of support. Further, reductions in tax rates that had been slated for introduction in the so-called "Omnibus Law", have been put into immediate effect in reaction to the spread of COVID-19 via Minister of Finance Regulation No. 23/PMK.03/2020 as well as Pres/Reg/1/2020.

### **1. General Corporate Income Tax**

As one of the measures that were planned to come into effect via the Omnibus Law, permanent establishment and corporate income tax rates are reduced to 22% this year and in 2021 and to 20% from 2022 onwards from the current 25%. Listed companies that sell 40% or more of their shares to the public and meet certain requirements will be eligible for an additional 3% reduction of their income tax rate.

### **2. Specific Corporate Income Tax Reductions and Exemptions**

Corporate taxpayers in 19 industries ("KLU Qualified Taxpayers"), certain taxpayers obtaining Ease of Imports for Export Purposes (Kemudahan Impor Tujuan Ekspor – "KITE"), and certain taxpayers obtaining Ease of Imports for Export Purposes for small and medium enterprises (Kemudahan Impor Tujuan Ekspor - Industri Kecil dan Menengah – "KITE IKM") will be enjoying reductions in income tax payments:

1. Corporate income tax on importation will be exempted for KLU Qualified Taxpayers as well as holders of KITE or KITE IKM upon obtaining a respective Tax Exemption Letter (Surat Keterangan Bebas). The exemption is currently limited until and including September 2020.
2. Monthly prepayment of corporate income tax will be reduced between 25% and 50% for KLU Qualified Taxpayers as well as holders of KITE or KITE IKM upon submitting a respective notification to the tax office. The reduction is currently limited until and including September 2020.

### **3. VAT Refund**

KLU Qualified Taxpayers as well as holders of KITE will benefit from preliminary VAT refunds from April to September 2020.

For exporters, there is no limit to the amount of VAT refunds. For non-exporters, the limit will be a total of IDR 5 billion.

#### 4. Individual Income Tax Exemptions

Personal income tax for employees with an income of not more than IDR 200 million will be exempt for those working for KLU Qualified Taxpayers as well as holders of KITE or KITE IKM. The incentive will be provided for six months, from April to September 2020.

#### 5. Import Duty Exemptions/Reliefs

Following an amendment to Art. 25 (1) and 26 (1) of the Customs Law, the Minister of Finance is authorized to exempt or reduce import duty of goods that are used to handle the COVID-19 outbreak.

#### 6. Digital Economy Tax

The previously announced taxation of transactions in the digital economy takes effect. It includes the application of VAT, electronic transaction tax and income tax to foreign suppliers of goods or services via the internet to customers in Indonesia. Further provisions on the rate, object and calculation of the income tax and the electronic transactions tax will be set forth in a government regulation.

### C. HR Compliance / Employment Law

Different from many jurisdictions in the ASEAN region, Indonesia's employment law has always been protective of employees, especially taking into account the social impact of terminations. Indonesia is known for high severance payments becoming payable upon termination. The Minister of Manpower has issued several employment policies in relation to the impact of COVID-19, none of which provide significant changes to the general principle of consensus in terminating or altering employment relationships. However, apart from the requirements that become applicable to employers in fighting COVID-19, there are certain measures that are advisable to employers in order to mitigate the effect of COVID-19.

1. Circular of the Minister of Manpower No. M/1/HK.04/II/2020 on the Engagement of Foreign Workers from The People's Republic of China:

- prohibits and suspends the engagement of foreign workers from China.

- foreign workers who are employed in temporary jobs and still live in Indonesia can still be extended for a maximum of 6 (six) months.

2. Circular of the Minister of Manpower No. M/3/HK.04/III/2020 on Protection of the Interests of Employees and Ensuring Business Continuity instructs provincial governors to take action to protect the interests of employees and ensure business continuity during the course of the COVID-19 outbreak. Governors are instructed to take measures to ensure:

- prevention of the spread of COVID-19 in the workplace and the treatment of cases that arise; and
- protection of wages during the pandemic.

### I. Obligation to Take Preventive Measures

Under the Circular Letter of the Director General of Manpower on Inspection and Occupational Health and Safety No. 5/193/AS.02.02/III/2020 regarding Preparedness in Facing the Spread of COVID-19 at the Workplace, there are immediate steps to be taken systematically and effectively as follows:

- provide guidance and supervision on the implementation of laws and regulations in the field of occupational safety and health, especially regarding the prevention of COVID-19 cases at the workplace;
- provide information to all levels of the organization and to related parties for guidance and supervision regarding COVID-19 cases at work;
- record and report to relevant agencies each case reasonably suspected of COVID-19 at the workplace;
- anticipate potential COVID-19 cases at work by taking precautionary measures on hygiene behavior and health and optimizing the function of occupational health services;
- implement the provisions of Manpower Regulation Number PER.02/MEN/1980 concerning the Examination of Health of Workers in the Implementation of Work Safety and Manpower Regulation Number PER.03/MEN/1982 concerning Occupational Health Services as part of the application of the conditions of occupational Health and Safety;
- make a preparedness plan in dealing with the COVID-19 pandemic, with the aim of minimizing risks for workers and business continuity including the anticipation of reduced workforce availability, increase of manager-level awareness of the implications of the COVID-19 outbreak, worker education on COVID-19, increased access and availability of hygiene products and facilities, cough and sneeze



hygiene and use of masks;

- compel workers with fever symptoms (38°C or higher) or a history of fever accompanied with one of the symptoms of respiratory disorders, such as cough, runny nose, sore throat, tightness breathing, holding a risk factor for COVID-19 or returning from outbreak areas to proceed to the nearest health facility.

## II. Continuing of Salary Payments

Based on the Indonesian Labor Law's provisions for the continuance of salary payments in case of illness, employees classified as Monitored Individuals (Orang Dalam Pengawasan/ODP) or have been infected with COVID-19 based on official statements issued by doctors, who are unable to work due to a mandatory isolation shall fully receive their salary payments as per Art. 93 (3) of the Indonesian Labor Law as follows: full payment for the first 4 months of medical treatment; 75% payment for the second 4 months of medical treatment; 50% payment for the third 4 months of medical treatment; and 25% payment for the fourth 4 months of medical treatment.

## III. Religious Holiday Allowance

Indonesian employees are entitled to receive a religious holiday allowance ("THR") in the form of an extra monthly salary depending on the timing of the highest holiday of their respective religions once during each calendar year as per Regulation No. 6 of 2016 on Religious Festivity Allowance for Employees in Companies. The bulk of these allowances will become due at the end of April 2020 as the Muslim fasting month of Ramadhan ends in May and is followed by the Idul-Fitri holidays.

In view of the COVID-19 outbreak, the Minister of Manpower explained in a statement on April 3, 2020 that companies can make payments in stages or in terms of instalments in case they are unable to fulfil their obligations. However, the THR will remain payable in full and companies failing to make full payment within the period of time agreed with their employees, will face administrative sanctions following examination, that may result in a fine of up to 5% of the total THR due to all employees.

## IV. Working from Home

Many companies in Indonesia have adopted work from home ("WFH") schemes intrinsically while several regional governments through their manpower authorities have issued advice and/or regulations on the implementation of such. As an example, based on the Circular of the Head of Manpower, Transmigration and Energy Agency of the Province of DKI Jakarta No. 14/SE/2020 on Appeals to Work From Home, following up on the Instruction of the Governor of the Province of DKI Jakarta No. 16 of 2020 concerning Increased Awareness for the Risk of the Corona Virus Infection Transmission (COVID-19) and based on the development and consideration of the current conditions in the Province of DKI Jakarta, companies are encouraged to take preventative measures related to the risk of transmission of the Corona Virus Disease (COVID-19), such as WFH or reduction of business activity. This may be achieved through:

- temporarily ceasing all business activity;
- temporarily reducing some business activity;
- continuing business activity through WFH measures.

Companies are further encouraged to report the steps taken to the Agency of Manpower, Transmigration and Energy and the Sub-Agency of Manpower, Transmigration and Energy in the 5 Municipalities Administrations of DKI Jakarta and the Thousand Islands Administrative District and to closely align such with employees and labour unions where applicable.

## V. Reduction of Working Hours/Unpaid Leave/Salary Cuts

In response to COVID-19, some employers may have to consider a complete or partial closure of their business, resulting in the redundancy of all employees, or laying off only a portion of the workforce. An employer may reduce the number of working hours and/or work days on the basis that he is trying to avoid mass terminations, as provided for in Ministry of Manpower Circular No. SE-907/MEN/PHI-PPHI/X/2004. This circular states that an employer may adopt certain responses (including reducing the number of working hours and work days) if it is experiencing difficulties that affect its employment situation before resorting to layoffs. However, these measures may only be pursued by reaching respective agreements with employees (e.g. on salary cuts and/or unpaid leave arrangements). Key considerations for this are:

- if employees freely agree to the proposals, each individual agreement should be recorded in writing and must be in Bahasa Indonesia (multi-language documents are permissible if Bahasa Indonesia is defined as the prevailing language);
- labour unions (where applicable) must be consulted and their approval secured.

## VI. Termination

Where employees do not agree to salary cuts and/or unpaid leave, the employer has the option of either seeking a mutual termination agreement (“MTA”) or to unilaterally terminate the employment relationship. Unilateral termination is generally discouraged since disputed (i.e. non-mutual) terminations can only be settled through the labour courts, a process that can take 6 months or more, during which the respective employee remains entitled to salary payments. The parties (the employer and employees, or if applicable, a labour union) are required to meet in an attempt to reach an amicable termination settlement, a process known as bipartite negotiation. If a settlement is reached, an MTA should be executed and registered at the relevant labour court. If negotiations fail, either the company or the employee may file the dispute with the relevant manpower affairs office. The manpower office will ask both parties whether the dispute should be resolved through conciliation with private conciliators or mediation with a mediator from the manpower office. If the non-binding written recommendation of the conciliator or mediator is rejected, the matter must be brought by either party to the relevant labour court to approve the termination and the benefits payable in connection with the termination. If the labour court decision is appealed the case then goes to the supreme court. In our experience, an additional ex gratia payment of two to three months’ salary is often required to ensure the employee signs an MTA to avoid the costly labour court process.

### 1. Statutory Severance Entitlement

The termination of employees initiated by the employer leads to comparatively high severance payments in favour of the employee. For contract/fixed-term employees, the balance of the contract must be paid in full if the agreement is terminated prematurely. A permanent employee’s entitlement in connection with termination of employment depends on their years of service and the circumstances of the separation. The categories of possible separation entitlements under Art. 156 of the Indonesian Labour Law consist of (a) severance pay of

up to 9 months’ wages, (b) service pay of up to 10 months’ wages, and (c) other compensation (e.g. for unused annual leave, any applicable relocation costs or expenses, compensation for housing, medical and hospitalization, and other separation benefits as may be agreed).

### 2. Termination Due to Closure/Partial Closure or Force Majeure

Under the Indonesian Labour Law, in the event of terminations as a result of the company closing down after two consecutive years of continuous losses or due to force majeure, terminated permanent employees are entitled to single severance pay, single service pay, and compensation. In the event of terminations for downsizing due to efficiency reasons (i.e. not due to financial losses or force majeure), terminated permanent employees are entitled to double severance pay, single service pay and compensation.

Although Indonesian Labour Law sets force majeure as one of the grounds for termination of employment, it does not explicitly define a force majeure event. The closest link to a specific provision on force majeure can be found in the Indonesian Civil Code (“ICC”). However, the effect of a force majeure event under Indonesian Labour Law is limited to a reduction of the termination package (single instead of double severance payment), instead of a full waiver of the obligation to pay severance payment. The determination of a force majeure event under Indonesian Labour Law is hard to predict due to lack of precedent. Should a termination based on the force majeure argument be successfully disputed, the severance entitlement of the employee increases to double severance payment, single long service payment and single compensation of rights payment.

### 3. Avoiding Termination – Practice Examples

There are several measures which were taken by companies in 1998, in the aftermath of the 1997 Asian financial crisis, and in 2005 during the global increase of the oil price in order to save operational costs and ultimately avoid layoffs as far as possible. These measures include:

- mutual agreements on salary reduction for managerial employees;
- reduction or complete halt of overtime work given that Indonesia has one of the highest overtime pay rates in Southeast Asia;
- early retirement packages for employees nearing the current

statutory retirement age of 57 (may vary depending on the time of retirement during a calendar year).

## D. Supply Chain and Commercial Contracts

The COVID-19 outbreak and its effects on the economy will lead to disruptions in cashflow as well as supply chains and thus the ability to meet contractual obligations for many companies. While these circumstances may often be addressed through mutual changes to the respective contractual relationship, where such an agreement cannot be reached, the ICC includes two basic principles for these disruptions: force majeure and impossible conditions.

### I. Force Majeure (Keadaan Memaksa) under Indonesian Law

Art. 1244 and 1245 of the ICC provide the main legal basis for the concept of force majeure under Indonesian law. On March 12th 2020, COVID-19 was declared a pandemic by the World Health Organization. Many businesses and factories are temporarily closed, which is causing critical implications for businesses.

Article 1244 ICC: *“A debtor must compensate for costs, damages and interests if he cannot prove, that the non-performance or late performance of his obligation under an agreement is caused by an unforeseen event, for which he is not responsible and he was not acting in bad faith.”*

Article 1245 ICC: *“A debtor does not need to compensate for costs, damages or interests, if a force majeure or an accidental event prevented him from paying or performing an obligation, or for this reason he committed a prohibited act.”*

It is generally accepted in Indonesia that to claim force majeure, the non-performing party must prove that the fulfilment of contractual obligations was made impossible by circumstances:

- a. that were beyond the non-performing party's control (unforeseen event);
- b. for which the non-performing party is not responsible; and
- c. that the non-performing party was acting in good faith (i.e. not claiming force majeure in bad faith).

Further or less restrictive requirements may apply subject to

the individual contract, since Indonesia applies a rather widely interpreted freedom of contract principle (Art. 1338 ICC), similar to other countries with a civil law tradition. It is therefore necessary to analyze each specific contract as to whether it includes alterations to the ICC in terms of the definition and/or effect of a force majeure event and/or the procedure for either party to claim such. The ICC does not stipulate any specific requirements for a party to claim force majeure.

There are presently no indications that the Indonesian government will issue any regulation, guidelines or other communication with respect to the effect of the COVID-19 pandemic on contractual obligations. Whether or not the COVID-19 outbreak will constitute a force majeure event will highly depend on the specific contractual obligation and the impact the situation has on it. Any direct effect by legal or administrative measures may increase the likelihood of successfully arguing force majeure.

### II. Impossible Conditions

Although the ICC does not recognize “frustration of contract” or “change in circumstances” as express legal doctrines, it includes alternative concepts which may accommodate these principles. Art. 1254 of the ICC provides: *“All conditions that are intended to do something that cannot be done, something that is contrary to morality, or something that is prohibited by law are void and render agreements conditioned upon them not in effect.”* The circumstances captured by the phrase “cannot be done” in the aforementioned provision are open to interpretation. Art. 1381 of the ICC relevantly includes: *“Obligations shall cease (...) by reason of the destruction of the goods that were owed.”*

Arguing that COVID-19 directly or indirectly leads to a change in conditions that made the fulfilment of a contractual obligation legally or practically impossible may thus provide an option subject to the facts of the specific case.

### III. Systematic Difficulties

It is to be noted that the Indonesian legal system bears considerable risks at both trial and enforcement stage due to corruption and arbitrary handling of proceedings by officials. In assessing the feasibility of a lawsuit, commercial considerations such as the duration and cost of the procedure must be weighed with special caution against the uncertainty of the outcome and the practical enforceability of the result.

## E. Corporate Compliance

The COVID-19 outbreak has led to significant disruptions in administrative procedures due to office closures and WFH measures in administrative bodies. As an example, applications for new work and stay permits are suspended and the Investment Coordinating Body (BKPM) practically shut its doors to the public, providing consultation hotlines for different topics. In some cases these measures are remedied by effective online procedures, e.g. in the area of customs, the MOLHR and the OSS System for the administration of business licenses. However, companies are and will be, facing difficulties in meeting statutory requirements for their corporate and regulatory compliance. So far, some of these issues have been addressed by specific regulations, while more remedial measures are to be expected.

### I. Listed Companies

OJK and the Indonesia Stock Exchange (“IDX”) have issued a number of exemptions as well as extensions of deadlines and alterations of procedures in order to address the difficulties listed companies face in meeting the strict requirements for their corporate compliance.

#### 1. AGMS and Reporting

Annual General Meetings of Shareholders (“AGMS”) of public companies may be postponed or done via e-proxy. OJK has introduced Circular Letter No. S-92/D.04/2020 on Relaxation of the Obligation to Submit Reports and Conduct of Shareholders Meetings. IDX has introduced the Decree of the Board of Directors of the IDX No. Kep-00027/BEI/03-2020 on Relaxation of the Obligation to Submit Financial Statements and Annual Reports.

OJK is expected and has verbally announced to provide further relaxation for public companies that intend to postpone their AGMS to a later date, but have already made an AGMS announcement. These companies may be able to proceed with the invitation to the later AGMS date that has been fixed, provided statutory notification periods are observed.

#### 2. E-Proxy / E-GMS

In a general move towards electronic procedures, Indonesia’s Central Securities Depository (PT Kustodian Sentral Efek Indonesia) is implementing an electronic proxy platform

and will regulate the operation of respective shareholders’ meetings. The platform is expected to be operational by the end of April.

## II. Competition Rules

On March 16, 2020, the Indonesia Competition Commission (Komisi Pengawas Persaingan Usaha or “KPPU”) issued a decree to temporarily halt its enforcement activities until March 31st which was extended initially until April 6th but may be extended further. The following activities will be temporarily suspended during this time:

1. case hearing;
2. case handling;
3. assessment and clarification for merger/acquisition filings.

The KPPU will not accept or register any merger/acquisition filings during its closure and will only begin accepting filings after its end. Case hearings will be rescheduled starting from April 7, 2020 subject to an extension of the closure. KPPU may opt to hold virtual hearings to read decisions. Filing deadlines are frozen and will resume from April 7, 2020 onwards. This currently means that the statutory deadlines for merger/acquisition filing, clarification and assessment will be extended by 14 business days.

## F. Your Contact



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# II. Malaysia

## A. Overview and Current Situation

In response to a rapid increase in Covid-19 cases in early March, the Malaysian Prime Minister announced a partial lockdown dubbed the Movement Control Order (“**MCO**”). The MCO entered into effect on 18 March 2020 and was intended to be in force until 31 March 2020 (the “**Period**”). On 25 March 2020, the MCO was extended until 14 April 2020 (the “**Extended Period**”). The MCO is based on the Prevention and Control of Infectious Diseases Act 1988 and the Police Act 1967.

In addition, the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 and a second set of Regulations under the same name for the Extended Period (the “**Regulations**”) have been enacted.

The MCO and the Regulations apply to the entirety of Malaysia. Among the restrictions introduced are those set out below.

### I. Closure of All Business Premises

All private business premises with the exception of supermarkets, public markets, grocery shops and convenience stores are to be closed. Nevertheless, working is not prohibited in general. Businesses are free to run operations as long as this can be done remotely.

### II. Closure of All Government and Private Premises Except for Essential Services

In addition, all government agencies and private service providers have been ordered to close down, except for those involved in essential services. All involved businesses are to reduce their staff to the minimum necessary for operations. Consequently, most government agencies are closed and have suspended their services.

During the Extended Period, additional limitations such as restrictions on the operation hours of supermarkets, public transport and food deliveries were implemented.

As of the time of writing, “essential services” are those in the following industries:

- Food;
- Water;
- Energy;
- Communication and internet;
- Security and defence;
- Solid waste and public cleaning management and sewerage;
- Healthcare and medical including dietary supplements;
- Banking and finance;
- E-commerce;
- Transportation via land, water or air;
- Port, dock, airport services and undertakings (including stevedoring, litarage, cargo handling, pilotage and storing or bulking of commodities);
- Production, refining, storage, supply and distribution of fuel and lubricants;
- Hotels and accommodations; and
- Any services or works determined important or critical to public health or safety by the government.

Enterprises within the necessary production chain of essential services are also exempted.

While businesses can apply for an exception at the Ministry of International Trade and Industry to continue their operations, these are granted very restrictively, especially during the Extended Period.

## III. Restriction of Movement

The Regulations prohibit all travel within Malaysia except for those made for the following reasons:

- To perform any official duty;
- To purchase daily necessities;
- To seek healthcare or medical services;
- To provide essential services; or
- To supply or deliver food, daily necessities or medicine.

During the Extended Period, only one person per household is permitted to travel, and such travel must be no further than 10 kilometres from their home. Longer trips require a police permit or an authorisation letter.

All gatherings are generally prohibited except for funerals. Residents are only to leave their houses for the allowed trips above. Other outdoor activities such as exercises are allowed in neither public nor private areas.

## IV. Travel Ban

Malaysian nationals are restricted from travelling abroad; returning nationals must undergo health examinations upon arrival in Malaysia and may be quarantined for 14 days.

Foreigners including permanent residents and expatriates holding long-term visas are generally barred from entering, except for those who work in essential services. However, foreigners are permitted to leave the country.

Expatriates living in Malaysia are free to remain in the country, even if their visa is expiring during the Period and the Extended Period, until notice otherwise is given by the government.

## V. Local Restrictions

As an additional note, there are also restrictions on a regional level, including total lockdowns for heavily infected areas.

## B. Government Support Measures

To date, Malaysia has rolled out three economic stimulus packages to alleviate the impact of Covid-19 and the MCO, as follows:

- The Economic Stimulus Package 2020, announced 27 February 2020 (“**ESP 1**”);
- The *Prihatin Rakyat* Economic Stimulus Package, announced 27 March 2020 (“**ESP 2**”); and
- The *Prihatin Plus* Economic Stimulus Package, announced 6 April 2020 (“**ESP 2+**”).

This Part B provides an overview of the key forms of State assistance under these packages. Please note that it is by no means comprehensive, and both forms of assistance available and their conditions are changing at a rapid pace.

We will first address measures available to all companies, categorised into general measures, tax measures and employment related measures. In subsequent sections, we address assistance specifically for Small and Medium Enterprises (“**SMEs**”) and finally those available for natural individuals and households.

### I. Measures Available to All Corporations

The following schemes are measures available to all companies. Save where qualified below, SMEs are eligible to

both the measures in this section and, additionally, those in Part B.II.2.

### 1. General Measures

#### a) Loan repayment renegotiation and stamp duty exemption

A company with loans owed to any licensed financial institutions (which would include most major banks) may request and negotiate a restructure, reschedule or moratorium on the loan repayment.

Any loan agreements which arise from such restructuring and so on will be exempt from stamp duty.

It should be noted that SMEs and individuals have an automatic moratorium of six months, subject to meeting certain conditions. (Please see Part B.II.2.b).

#### b) MYR 50 billion guarantee scheme

Under ESP 2, the government announced that it is setting up an MYR 50 billion guarantee scheme with a guarantee of up to 80% of the loan amount for the purpose of financing working capital required by corporate sectors facing difficulties due to Covid-19. The minimum guaranteed loan size is MYR 20 million per business.

The facility will be available for application starting from 1 May 2020, until either 31 December 2020 or the fund is fully utilised.

At this point in time, the application process is not yet clear, but developments can be monitored on the website of the administrator of the scheme, Danajamin Nasional Berhad (<https://www.danajamin.com/>).

#### c) Discount on electricity bills

From 1 April 2020 to 30 September 2020, businesses are granted a discount on electricity bills, as follows:

- For hotel operators, travel agencies, local airlines' offices, shopping malls, convention centres and theme parks, a 15% discount;
- For all other commercial, industrial and agricultural premises, a 2% discount.



These discounts will be automatically applied by the Tenaga Nasional Berhad (the relevant government-linked company).

#### **d) Investment incentives**

In order to encourage businesses to continue investing in 2020 in readiness for the eventual economic recovery, the government introduced two incentive schemes, as follows:

- An accelerated capital allowance for qualifying capital expenditures on machinery and equipment, including ICT equipment, which can be claimed within a two-year period for expenses incurred from 1 March 2020 to 31 December 2020; and
- A special tax deduction on qualifying expenditures incurred from 1 March 2020 to 31 December 2020 in the renovation or refurbishment of business premises, up to MYR 300,000.

#### **e) Waiver of listing fees**

Lastly in terms of general measures, for a period of 12 months, the Securities Commission Malaysia and Bursa Malaysia will waive their listing fees for –

- Companies seeking to be listed on the LEAP or ACE Markets; and
- Companies with market capitalisation of less than MYR 500 million seeking listing on the Main Market will also enjoy waived listing fees.

## **2. Tax Measures**

#### **a) Tax deduction on personal protective equipment (“PPE”) for employees**

Any expense the Company incurs in order to provide its employees with disposable PPE, for example face masks, are eligible for tax deduction under Section 33(1) of the Income Tax Act 1967.

Expenses for non-disposable PPE can be claimed as capital allowance.

#### **b) Tax deduction in exchange for reducing SME rent**

Where a landlord has an SME tenant, in exchange for reducing the rent by at least 30% from April to June 2020, the landlord may be entitled to a tax deduction of the equivalent amount.

#### **c) Deferral and revision of income tax estimation**

All SMEs may postpone income tax instalment payments for a period of three months beginning 1 April 2020.

Businesses in the tourism industry such as travel agencies, hoteliers and airlines may defer for six months beginning 1 April 2020. In addition, other businesses outside the tourism sector affected by the current economic circumstances may revise the amount of income tax imposed in the third, sixth and ninth instalments during the basic accounting period.

#### **d) Hotels exempted from levying Service Tax**

Hotels are exempted from levying Service Tax on taxable services provided for a period of six months, from 1 March 2020 to 31 August 2020.

#### **e) Double deduction for hotel operators’ training expenses**

Companies are encouraged to send employees for training in courses approved by the Ministry of Tourism, Arts and Culture and related to the tourism industry, hotel operation or tour operating business. Such companies may be entitled to double tax deduction in respect of the expenses incurred.

#### **f) Import duty and Sales Tax exemption on equipment and machinery for port operators**

Port operators are granted exemptions to import duties and Sales Tax on imported or locally purchased equipment and machinery used directly in port operation from 1 April 2020 to 31 March 2023.

#### **g) Double deduction for the establishment of regional office by international shipping companies**

International shipping companies establishing in Malaysia will enjoy a double deduction on pre-commencement expenditure for setting up regional offices in Malaysia. Applications for this incentive must be received by the Malaysian Investment Development Authority (“MIDA”) by 31 December 2021.

## **3. Employment-related Measures**

In this third category are State aid measures which are related to employment, including subsidy programmes aimed at encouraging employers to retain employees and temporary exemptions from levies normally imposed on employers.

### a) Wage Subsidy Program (“WSP”)

The WSP was first established by the ESP2 and subsequently widened by the ESP 2+. Through it, in essence, the government subsidises the wages of employees, subject to the fulfilment of certain conditions.

WSP entitlements and conditions vary depending on the number of employees in a company. It should be noted that at the time of writing, there remains uncertainty over the WSP entitlements and they have been subject to frequent change in a matter of days.

The key WSP conditions are as follows:

- Only employees who are Malaysian AND earning wages of MYR 4,000 or less are eligible;
- The employee must be registered with the Employment Insurance System (“EIS”, a scheme which aids individuals who become unemployed);
- The employer must have been a registered entity before 1 January 2020 and registered with the Social Security Organisation (“PERKESO”);

- The employer must not deduct the employees’ salary;
- The employer must not dismiss the employees’ within a period of six months, inclusive of the three months in which the subsidy is received.
- For companies with 75 employees or less, there is no need to show a reduction in income for entitlement to WSP. For companies with more, , there is a need to prove a loss of income of 50% since January 2020.

It should be noted that the WSP and the ERP (directly below) are mutually exclusive: the two cannot be granted in respect of the same employee.

The table below is an extract and translation of the WSP overview provided by PERKESO.

In terms of procedure:

- Applications for the WSP open on 9 April 2020, and are made through <https://prihatin.perkeso.gov.my>;
- WSP funds are paid into employers’ bank accounts within seven to fourteen days after approval by PERKESO.

Company Size	Not more than 75 employees	Between 76 to 200 employees	More than 200 employees
Wage subsidy, per employee per month	MYR 1,200	MYR 800	MYR 600
Restricted number of employees	Up to 75	Up to 200	Up to 200
Months of payment	3 consecutive months		
Submission of management account to show more than 50% drop in revenue	Not required	Required	Required



## **b) Employment Retention Program (“ERP”)**

The ERP provides financial assistance to employees who are on unpaid leave by agreement with the employer. Eligible employees receive MYR 600 per month during the period of unpaid leave.

The conditions are as follows:

- Only private sector employees (temporary or otherwise) who have registered and are contributing to the EIS AND with monthly wages of MYR 4,000 or less are eligible;
- There must be an unpaid leave period of at least 30 days and up to 6 months, with the notice of unpaid leave being issued on or after 1 March 2020;
- Employers must apply on behalf of their employees by completing the PERKESO “Form ERPC-19” and e-mailing it to [erpc19@perkeso.gov.my](mailto:erpc19@perkeso.gov.my). The form is available here at [https://www.perkeso.gov.my/images/erp/BORANG\\_ERPC19\\_Edited\\_22\\_Mac\\_V4.pdf](https://www.perkeso.gov.my/images/erp/BORANG_ERPC19_Edited_22_Mac_V4.pdf);
- Payments received by employers from PERKESO must be paid into employees’ bank accounts within seven days of receipt.

## **c) Exemption on Human Resources Development Fund (“HRDF”) Levy**

For employers registered with the HRDF (in general terms, employers in the manufacturing, mining and quarrying and specified service sectors with more than ten employees), there is an exemption from the HRDF Levy for a period of 6 months beginning April 2020.

## **d) Reduction of Foreign Workers Levy**

“Foreign Workers” in this regard does not refer to all non-Malaysian employees, but instead means those hired via application for a Visa with Reference from the Foreign Workers Division of the Immigration Department of Malaysia, in order to work in the manufacturing, construction, plantation, agriculture and services sectors.

For companies with Foreign Workers whose permits will expire in the period of 1 April to 31 December 2020, the levy will be reduced by 25%.

## **e) Employers Advisory Service (“EAS”)**

The Employee Provident Fund (“EPF”) is a government retirement fund, to which employers must contribute in respect of Malaysian employees.

EAS, projected to be established on 15 April 2020, aims to provide advice to employers in respect of employer’s EPF contributions. Through discussions with the EAS, employers may be able to restructure contribution schedules or stagger payments for outstanding contributions.

Save for the general outline above, little is known at this point about the EAS. Further developments can be tracked on the EPF website, [www.kwsp.gov.my](http://www.kwsp.gov.my).

## **II. SMEs**

Prior to considering the forms of assistance available to SMEs, the definition of SMEs will first be addressed.

### **1. Definition of SMEs**

SMEs can be divided into three subcategories, namely micro, small and medium:

- A microenterprise, regardless of industry sector, has sales turnover of less than MYR 300,000 OR less than five full-time employees;
- As for small and medium enterprises, the definition varies between the manufacturing and service / other sectors, as set out in the table below. It should be noted that the “services” sector includes distributive trade, and in essence, “other” industries refer to primary agriculture, construction and mining and quarrying:

	Manufacturing sector	Services and other sectors
Small enterprise	Sales turnover from MYR 300,000 to less than MYR 15 million; OR From 5 to less than 75 full-time employees.	Sales turnover from MYR 300,000 to less than MYR 3 million; OR From 5 to less than 30 full-time employees.
Medium enterprise	Sales turnover from MYR 15 million to MYR 50 million; OR From 75 to 200 full-time employees.	Sales turnover from MYR 3 million to MYR 20 million; OR From 30 to 75 full-time employees.

The definition above is from the *Guideline for New SME Definition* (updated August 2016) issued by the SME Corp. Malaysia. It should also be noted that there is a different definition for SMEs under the Income Tax Act 1967. For the tax-related measures, it has yet to be clarified which definition is to apply.

## 2. SME Measures

The main forms of government assistance available to SMEs are outlined below. Once again, these are in addition to those available to all companies in Part B.I above, unless stated otherwise.

### a) Bank Negara Malaysia (“BNM”, the Central Bank) Financing Facilities

There are five financing facilities available to SMEs from BNM, as follows:

- The Special Relief Facility;
- All Economic Sectors Facility;
- Automation and Digitalisation Facility;
- Agrofood Facility; and
- Micro Enterprises Facility.

According to BNM guidance, only SMEs with 51% Malaysian shareholding are eligible for these facilities.

#### i) Special Relief Facility (“SRF”)

The SRF is a fund established to alleviate the cash flow issues of SMEs caused by Covid-19; the funds will be offered as loans through Participating Financial Institutions (“PFIs”, i.e. applicable commercial banks) at an interest rate up to 3.5% per annum.

The following key points should be noted:

- SRF funds must only be used for working capital purposes;
- No collateral is required for the SRF;
- An SME may apply for the SRF multiple times, subject to a cap on total aggregated financing of MYR 1 million;
- The SRF will only be available until 31 December 2020.

#### ii) All Economic Sectors Facility (“AES”)

The AES aims to enhance SMEs’ access to financing in all economic sectors. Its key details are as follows:

- Funds can be used for capital expenditures and/or working capital;
- The financing rate is up to 7% per annum;
- The maximum financing amount is MYR 5 million per SME.

#### iii) SME Automation and Digitalisation Facility (“ADF”)

The purpose of the ADF is to enable SMEs to finance the purchase of equipment, machinery, ICT hardware, software, solutions and services, technology support services and other intangible assets, in order to enhance their productivity and efficiency. Please note that SMEs involved in the *production and supply* of automation and digitalisation services are not eligible.

The ADF financing rate is 4% per annum and the maximum financing amount is MYR 3 million per SME. The scheme will only be available until 31 December 2020.

#### iv) Agrofood Facility

The National Agrofood Policy was introduced in 2010 for the development of the agricultural sector. Under the ESP 1, the assistance available for Agrofood SMEs was expanded. In particular, the Agrofood Facility offers funds at a financing rate of up to 3.75% for a maximum tenure of 8 years, subject to a cap of MYR 5 million per SME.

#### v) Micro Enterprises Facility (“MEF”)

As its name suggests, the MEF is only available to micro enterprises, not all SMEs. In brief:

- Funds received can be used for capital expenditures and/or working capital;
- The financing rate is to be determined by PFIs;
- The maximum financing amount is MYR 50,000 per PFI.

#### b) Six-month Loan Deferment Package

Where an SME is subject to conventional loans or Islamic financing payment obligations, a licensed financial institution will automatically defer payments for a period of six months subject to two main conditions:

- The loan / financing must not be in arrears exceeding 90 days as at 1 April 2020; and
- The loan / financing must be denominated in Malaysian Ringgit.

Equivalent moratoria apply to loans from TEKUN Nasional, *Majlis Amanah Rakyat* (“**MARA**”, the People’s Trust Council), cooperatives and other government agencies providing financing to SMEs.

For further details, SME may refer to this FAQ from BNM [https://www.bnm.gov.my/index.php?rp=en\\_faqcovid19loan](https://www.bnm.gov.my/index.php?rp=en_faqcovid19loan). Please note, however, that it is likely subject to further updates.

#### c) *BizMula-i* and *BizWanita-i* schemes

*BizMula-i* is a financing scheme for SMEs in operation for less than 4 years.

In addition, the following main conditions apply:

- The SME must be a Malaysian-controlled and Malaysian-owned (at least 51% shareholding) company or business and must reside in Malaysia;
- The key person of the SME or his successor’s age must be at

least 21 at the point of application and no more than 65 upon full settlement;

- Shareholding by Public Listed Companies and Government Linked Companies (if any) in the SME cannot exceed 20%.

The maximum financing amount is MYR 300,00, whereas the minimum is MYR 30,000.

As for the *BizWanita-i* scheme, it is for SMEs controlled female entrepreneurs, which also have been in business for less than 4 years. The remaining details of this scheme are mostly similar to those of the *BizMula-i* scheme.

#### d) Micro Credit Scheme (“MCS”)

The MCS was initially set up under the ESP 1, offering a MYR 200 million microcredit scheme to micro enterprises.

After modifications by the ESP 2 and ESP 2+, the key points of the MCS are as follows:

- The MCS is available to all business sectors (as opposed to only specified sectors under ESP 1);
- The interest rate is 0%;
- The scheme is available through either the *Bank Simpanan Nasional* (“**BSN**”, the National Savings Bank) or TEKUN Nasional, an agency under the Ministry of Entrepreneurial and Cooperative Development;
- The BSN MCS has a maximum financing amount of MYR 75,000 per enterprise; there is no need for collateral;
- The TEKUN Nasional MCS has a maximum financing amount of MYR 10,000 per enterprise. At this point in time, no information is available regarding the need for collateral.
- A micro enterprise cannot apply to both BSN MCS and the TEKUN Nasional MCS.

#### ■ *PRIHATIN* Special Grant for micro enterprises

Under the ESP 2+, micro enterprises stand to receive a MYR 3,000 *PRIHATIN* Special Grant. Save that such enterprises must be registered with the Inland Revenue Board of Malaysia (“**LHDN**”) to be eligible, little is known at this point about the practicalities of receiving the grant.

#### f) Encouragement to moneylenders to grant moratorium

Moneylenders registered under the Moneylenders Act 1951 are encouraged to provide loan repayment moratoria to SME

borrowers for six months beginning April 2020. Please note that these moratoria are not available as of right, in contrast to those provided by licenced financial institutions (see [Part B.II.2.b](#)), but are instead up to the moneylenders' discretion.

#### **g) Discounts or waivers of rent**

SMEs in the retail sector operating on premises owned by government-linked companies ("GLCs") may enjoy waived or discounted rent. GLCs which have already agreed to waivers or discounts include MARA, PETRONAS, PNB, PLUS, UDA and several State governments.

As for SMEs with private landlords, the landlord retains the right to refuse adjusting rent, although, as discussed in [Part B.I.2.b](#)) above, the government encourages and incentivises them to grant waivers / discounts.

### **III. Individuals**

Having considered the measures introduced in aid of companies, this last section on State assistance focuses on natural individuals. The following is a summary of the key measures available:

#### **1. EPF: Reduction of Contribution and Early Right to Withdraw**

For EPF, for a period of nine months, between 1 April to 31 December 2020, the minimum employee EPF contribution is reduced from 11% to 7%. However, employees may choose to continue contributing at a higher rate.

In addition, employees may also apply to withdraw a maximum of MYR 500 monthly from their EPF, as an exception to the general rules of withdrawal only upon reaching retirement.

#### **2. Cash Aid: Bantuan Sarah Hidup ("BSH"), Bantuan Prihatin Nasional ("BPN") and Others**

Put simply, the BSH is a cash aid for either households with a monthly income of MYR 4,000 and below or singles with a monthly income of MYR 2,000 or below. BSH payments were enhanced under the ESP 1; the additional payments will be credited to registered individuals automatically.

The BPN is a further one-off cash payment available to low and middle income households and individuals. Those

registered under the BSH will receive BPN payments without further action. Those who are not registered will need to register with the LHDN.

Other groups potentially eligible for cash pay-outs include students of higher learning, who will receive a MYR 200 per person.

#### **3. EIS: Relaxation of Eligibility Rules and Training Benefits**

The EIS has been briefly mentioned in the context of employment-related aid to companies above. In essence, it is a scheme which helps Malaysian citizens and permanent residents working in the private sector and contributing to the EIS who suffer a loss of employment.

The following benefits are available through the EIS:

- Job Search Allowance;
- Reduced Income Allowance;
- Training Fee;
- Training Allowance;
- Early Re-employment Allowance; and
- Re-employment placement program (job search assistance) and career counselling.

According to the ESP 1 announcement, the eligibility conditions for EIS would be relaxed, in particular a three-month minimum contribution condition would be waived.

In addition, eligible individuals may also be entitled to training benefits, details of which can be found on PERKESO's website.

#### **4. Loan Moratoria**

As with SMEs, individuals benefit from an automatic loan moratorium of six months from licenced financial institutions if qualifying conditions are satisfied. In addition, those with National Higher Education Fund Corporation ("PTPTN") and Skills Development Fund Corporation ("PTPK") loans will also benefit from six-month moratoria.

## 5. Discount on Electricity Bills

Residential premises are granted a tiered electricity discount ranging from 15% to 50%, depending on electricity consumption. Those who do not qualify for the lowest 15% discount will nevertheless have a default 2% reduction.

## 6. Six-month Rent Waiver For Government Housing and Premises

Residents of *Project Perumahan Awam* and *Perumahan Awam* homes have been given a six-month rental exemption, as have tenants of all premises owned by the Federal Government and its agencies. The Kuala Lumpur City Hall has granted a similar exemption.

## 7. Specific Occupations

Under the economic stimulus packages, those engaged in specific occupations may be entitled to particular benefits. Such occupations include:

- Taxi and tour bus drivers, tour guides active and registered since 31 December 2019;
- Civil servants directly involved in Covid-19 duties, including medical personnel, immigration officers at entry points, military, police, civil defence staff and People's Volunteer Corps ("RELA") members;
- e-hailing drivers; and
- Workers in contract services, e.g. by cleaning and supplying food in schools and government agencies.

## 8. Tourism-related Incentives

Finally, there are certain tourism-related incentives available to individuals announced under ESP 1 prior to the MCO taking effect, such as a special income tax relief for domestic travel. Given that these incentives are now of limited utility until the MCO ceases, they will not be discussed in any detail.

# C. HR Compliance / Employment Law

## I. MCO Restrictions on Employees' Performance

As discussed in Part A above, save for essential service providers and those granted exemptions, private business premises must be closed down. Employees of non-essential

services cannot be instructed to come to the workplace while the MCO remains in force. Employees may, however, be instructed to work from home.

## II. Obligations of employers and possible measures

As starting points regarding the obligations of employers during the Period and Extended Period:

- Employers cannot unilaterally change the terms of employment, for example reduce salaries, force employees to take annual, sick or unpaid leave, or reduce working hours, except where such power is expressly stated in the employment agreement (see Part C.II.1) or, potentially, the employer is facing a financial crisis (see Part C.II.3); and
- Save where the conditions for a retrenchment are satisfied (see outline in Part C.II.4), employees cannot be terminated by reason of the MCO.

### 1. Express Terms in Employment Agreements

As a first step, employment agreements may be worth scrutinising for terms potentially helpful to employers. Purely as examples:

- Even where base salaries must be paid in full, if bonuses are said to be paid at the discretion of the employer, they may be withheld;
- Certain employees may have working hours and pay which are dependent on the availability of work, though care must be taken that such pay is not reduced below the minimum wage. Minimum wages differ by area; the current rules can be found here [http://www.federalgazette.agc.gov.my/outputp/pua\\_20200110\\_P.U.%20\(A\)%205.pdf](http://www.federalgazette.agc.gov.my/outputp/pua_20200110_P.U.%20(A)%205.pdf) (the English version begins on page 7);
- Employment agreements may also contain clauses which cater for unforeseen events beyond the control of the parties, typically wars and natural disasters. If such events occur, depending on the clause, the parties may be able to terminate the agreement, suspend their obligations, renegotiate terms and so on. These are known as *force majeure* clauses. Crucially, these clauses can only be used if *expressly* included in the agreement *and* where they are written in such a way that the circumstances created by Covid-19 or the MCO are considered *force majeure* events triggering the clause.

## A note on frustration in respect of employment agreements

The concept of frustration (in essence, a contract becoming void because it has become impossible to perform) is discussed in more detail in [Part D.II](#) below in respect of commercial agreements. In the context of labour law, suffice to say that the Bar Council Industrial and Employment Law Committee has issued guidance stating that there must be impossibility over a *prolonged* period of time before the agreement can be considered frustrated. From case law, successful cases on frustration commonly involve an inability to perform spanning years, not one or two months. Therefore, unless the present circumstances continue over an extended period of time, an argument based on frustration is unlikely to succeed.

## 2. Voluntary Measures

If the express terms of the employment agreement are of no help, employers may discuss and agree on voluntary measures with employees. In announcing the ESP 2+, the government encouraged employers to actively seek agreement with their employees where necessary, including on pay cuts and unpaid leave while the MCO remains in force.

Employers and employees may contact the Department of Labour for advice on potential solutions in this regard.

## 3. Compulsory Measures

Normally, an employer who imposed force unpaid leave and so on would be both in breach of the employment agreement and at risk of employees claiming constructive dismissal.

However, compulsory measures *may* be lawful if it a last resort alternative to retrenchment. According to the *Code of Conduct for Industrial Harmony* of 1975, in a situation where redundancy is likely, an employer may take steps to minimise reductions of its workforce by, *inter alia*, reducing working hours. [Part C.II.4](#) discusses retrenchment in more detail.

In addition, there is also case law indicating that an employer in a financial crisis may ask employees to take annual leave. Nevertheless, what constitutes a “financial crisis” and how it differs from a situation whereby an employer is merely being “financially prudent” is unclear; the latter has been found insufficient for employers to compel the taking of annual leave.

Taken as a whole, in the imposition of compulsory measures, much depends on the factual circumstances faced by a company and a careful approach is necessary.

## 4. Retrenchment

As a last resort, employees may be retrenched, i.e. dismissed because they have become surplus to the needs of a company.

In simple terms, an employer must be able to show that a retrenchment is justified, as follows:

- The employer underwent a reorganisation or a restructuring, for example due to losses;
- The reorganisation gave rise to a genuine situation of redundancy, meaning there is a surplus of manpower for the business requirements of the company; and
- The retrenchment exercise is carried out in a procedurally fair manner. Doing so includes, *inter alia*, following the order of LIFO principle as discussed further below and using objective criteria when selecting the employees to be retrenched.

With regard to Covid-19, the MOHR recognises that the retrenchment of employees is an employer’s prerogative, but states that employers must comply with three basic principles:

- The employer’s business must have been genuinely impacted by Covid-19;
- Prior to resorting to retrenchment, the employer must take steps such as reducing working hours, overtime and work on rest days, restricting new recruitment, pay cuts, and temporary lay-offs; and
- If a retrenchment is unavoidable, foreign employees must be dismissed before local employees. Local employees must be retrenched in accordance with the “last in first out” (“LIFO”) principle, i.e. employees will be dismissed in the order of shortest to longest tenure. The LIFO principle can only be set aside if the employer has strong justifications to do so.

Where employees being retrenched are those protected by the Employment Act 1955 (which include employees earning monthly wages of MYR 2,000 or less, manual labourers and commercial vehicle operators), employers must pay statutory retrenchment benefits.

Finally, where an improperly conducted retrenchment exercise may rise to an employee’s claim for dismissal without just cause or excuse.



## D. Supply Chain and Commercial Contracts

The Covid-19 outbreak and the measures taken to fight it increasingly affect businesses and their ability to honour contracts with their business partners and customers. On both sides of contracts, recurring questions from companies relate to the legal options and rights of parties when contractual obligations can no longer be performed.

### I. Express Contract Terms and Force Majeure Clauses

As a first step, businesses should review their individual contracts for potential clauses intended for such situations. In particular, so-called *force majeure* clauses are common in international commercial contracts. A *force majeure* clause, however, cannot be implied under Malaysian law; it must be expressly stated.

*Force majeure* clauses usually define exceptional events in a non-exhaustive list as “*force majeure* events”, such as war, riots, strikes, natural catastrophes, government restrictions or epidemics, which allow the defaulting party to suspend contractual obligations. Usually, such events must be the cause of the failure to perform the contractual obligation and must not be something which could have been reasonably mitigated.

As such, whether a *force majeure* clause can be invoked must be determined in light of the facts of each case. The current situation could typically be covered by *force majeure* events such as “pandemic” or as “epidemic”. The MCO and the Regulations could also constitute a *force majeure* event under terms such as “government restriction” or “action by government”. If the respective clause does not expressly list an applicable term, clauses often include a “catch-all” term for events which have been unforeseen and are beyond the control of the parties. These “catch-all” terms or other terms could potentially be interpreted to cover the current situation.

In such interpretations, the Malaysian courts ask how a reasonable commercial person would construe the term and follow a holistic approach, where the term must always be seen in the context of the whole contract. However, if the non-performance was not caused directly by the outbreak or government actions, it should be noted that an “economic downturn” alone would not be considered as an unforeseeable event beyond the control of the parties but only a general economic risk. The current situation has not yet been

considered by the courts, but due to the gravity of the crisis, many cases in connection with the outbreak are likely to be heard at some point, thereby providing guidance.

Finally, if a *force majeure* clause has been successfully invoked, commonly but depending on its terms, all contractual obligations are suspended for a specified term or for the duration of the event and certain liabilities are excluded. A *force majeure* event may also give rise to a right to terminate the contract.

Before a party invokes a *force majeure* clause, as a safety measure against a potential challenge, the party should review the details and requirements of the individual clause as well as to keep detailed records of the reasons for the non-performance, of notifications to the other party and of all measures taken to mitigate the consequences of the purported *force majeure* event.

### II. Frustration

If a contract does not include a *force majeure* clause and a party cannot perform its obligation under a contract, the contract may be discharged under the doctrine of frustration

In Malaysia, common law frustration has been codified in Section 57 (2) of the Contracts Act 1950. It provides that a frustrated contract is void. For this reason, the consequences of the frustration being invoked are more radical than the suspension of the obligations as usually provided for under a *force majeure* clause.

That said, the threshold for establishing frustration is very high. It is not the case that every default in the current crisis would frustrate a contract. As a precondition, the underlying event must not be the fault of any party of the contract and must not have been foreseeable when the contract was formed. Further, the Malaysian courts construe the term “impossible” narrowly: in essence, a contract frustrated when, as a result of the intervening event, the contract is said to have been so radically altered as to no longer be the same as the one into which the parties entered. Normally, the performance of the contract must have become physically or economically impossible for the contract to be frustrated. It is insufficient for performance to simply have become more onerous, financially or otherwise. Normally, frustration cannot be invoked unless reasonable steps to secure performance have been taken.

Where performance does not become permanently impossible but is merely impossible within a fixed timeframe, the contract will only be frustrated when a fixed date for the performance to the exclusion of a later performance has been stipulated in the contract.

Where a contract is frustrated, all obligations of the parties under the contract cease. If sums have already been paid, those sums must be returned, but expenses already reasonably incurred for the performance of the contract may be deducted.

## E. Corporate Compliance

Last but not least, the Covid-19 crisis as well as the MCO and the Regulations affect the administration of companies.

The Companies Commission of Malaysia (“CCM”) suspended all services during the Period. However, during the Extended Period, online services are gradually being relaunched and CCM’s online portals are operating again, enabling certain transactions. However, delays and partial limitations still occur and counters remain closed.

In terms of companies’ corporate obligations:

- An automatic moratorium of thirty days after the expiry of the MCO for the lodgement of statutory filings and notifications has been announced;
- Late filing fees have been waived during this period;
- On application to CCM, the deadline for the filing of financial statements can be extended for three months for companies with financial years ending between September 30 and 31 December .

Whether the general management of companies by the board of directors is affected depends particularly on the constitution of the company. The Malaysian Companies Act 2016 allows companies to regulate their internal management rather freely within their constitution. Where a constitution does not regulate the proceedings of the board of directors, the provisions of the Third Schedule to the Companies Act 2016 apply. Under these provisions, directors can pass resolutions at meetings held by means of audio or audio-visual communications. Resolutions can also be passed in writing by signature of the directors. Similar provisions are common in individual constitutions as well.

Similarly, the proceedings of shareholders’ meetings and resolutions can also be regulated individually in the constitution. Unless therein otherwise provided, a shareholders’ resolution may be passed in writing while the shareholders sign separately without being physically at the same location. The signed resolution can be transmitted to the company in electronic form but lapses if it has not been passed within 28 days from its circulation. In addition, annual general meetings can be held remotely using communication technology as well if stipulated in the constitution. Annual general meetings are only mandatory for public companies, for which they must be held within six months from the end of the company’s financial year. Where required, the company can also apply for an extension of the deadline to CCM and adjourn the meeting.

## F. Your Contact



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# III. Myanmar

## A. Overview

### I. Immigration

#### 1. Suspension of new visa issuance and flights

The Ministry of Labour, Immigration and Population announced a temporary suspension of all new e-visa applications, visa on arrival and visa-free entry for the period from 20 March 2020 until 30 April 2020, and Myanmar embassies and consulates abroad have temporarily suspended the issuance of new visas.

Further, following a special request of the Ministry of Health and Sports, the Ministry of Transport and Communication has, for a period of two (2) weeks, suspended all incoming international passenger flights effective from 30 March 2020. Only outbound flights may be permitted at the request of foreign governments, to evacuate stranded foreign citizens.

Finally, all land borders have been closed until further notice.

#### 2. Renewal of existing visa within Myanmar

##### Business Visa and Stay Permits

Due to the numerous travel restrictions and flight cancellations, the Directorate of Investment and Company Administration relaxed the requirements for the renewal of business visa and stay permits. Foreigners working in Myanmar can now apply for new visa and stay permits until up to five (5) days prior to expiry of their existing visa (previously, such applications had to be submitted at least 21 days before the expiry of the visa). This relaxation will remain in effect until further notice.

##### Tourist Visa

The Ministry of Labour, Immigration and Population also announced measures for foreign tourists stranded in the country (e.g. due to flight cancellation). Visitors on an e-visa, visa on arrival or visa issued by a Myanmar embassy or consulate abroad can, with a recommendation letter from their respective embassy, apply for visa and stay permit extensions.

#### 3. Quarantine

From 25 March 2020, any person (citizen or foreign) arriving in Myanmar is required to observe a quarantine of 14 days at a quarantine facility or designated hotel.

### II. Preventive Measures

#### 1. Restriction of public events

On 13 March 2020, the Myanmar Government announced restrictions of mass gatherings and public events until end of April. The popular Thingyan festivities have been cancelled and citizens have been instructed to stay at home until further notice.

On 2 April 2020, the Regional Government of the Yangon Region was the first to order that all residents must stay home from 10 April until 19 April, except for necessary errands (e.g. groceries) and health reasons, followed by the Chief Minister of Mandalay Region announcing travel restrictions from 7 April until 21 April.

Meanwhile, most regional governments around the country have announced similar measures. As a consequence, public passenger transportation will be severely restricted, and many businesses, including hotels and guesthouses, will be closed.

#### 2. Business closure

While no general lock down or business closure has been announced yet, some specific businesses such as cinemas, bars, spas and schools have been temporarily shut down.

#### 3. Essential supplies

On 31 March 2020, the Ministry of Commerce issued Notification 21/2020 to address shortages and price increases of certain essential goods. From 31 March 2020, hoarding of medical materials/equipment for the prevention, control and treatment of COVID-19, medicines and consumer goods, with the objective of distribution at a higher price is forbidden.

#### 4. Work from home policy for civil servants

On 25 March 2020, the Office of the President issued an order pursuant to which all civil servants shall work on rotational basis, with only fifty percent (50%) working in the office at the

same time. The remaining fifty percent (50%) shall work from home.

As a consequence, many administrative authorities are currently not fully active, or have adjusted their policies to allow online submissions and filings.

## B. Government Support Measures

### I. Directive No. 4/2020 of the Central Bank of Myanmar

On 24 March 2020, the Central Bank of Myanmar issued the Directive No. 4/2020, to reduce the interest rates.

### II. Notification No. 1/2020 of the Ministry of Planning, Finance, and Industry

On 18 March 2020, the Ministry of Planning, Finance, and Industry issued the Notification No. 1/2020 in order to support certain businesses.

### COVID-19 fund and soft loans to Myanmar citizens and Myanmar-owned companies

Pursuant to Notification No. 1/2020, a fund of MMK 100 billion (approx. USD 72 million) shall be established. The fund will be managed by the Myanmar Economic Bank to finance Myanmar citizen and Myanmar-owned companies active in the following sectors:

- Cut Make and Pack;
  - Hotel and Tourism; and
  - Small and Medium Enterprises.
- (Together referred as "Prioritized Sectors")

Myanmar citizens and Myanmar-citizen owned companies active in the Prioritized Sectors can apply for a soft loan at one percent (1%) interest rate with a term of one (1) year.

Pursuant to the Small and Medium Enterprises Development Law 2015, the criteria to qualify as a Small or Medium Enterprise vary depending on the type of business, number of employees, capital investment an annual income.

Particulars	New Rate (%)
Annual Interest Rate	8.5
Minimum bank deposit rate for savings deposits, savings certificates and time deposits	6.5
Maximum lending rate (including all charges) for loans with collateral	11.5
Maximum lending rate (including all charges) for loans without collateral	14.5

*Small enterprises*

<b>Types of business</b>	<b>No. of permanent employees</b>	<b>Capital investment excluding land value</b>	<b>Annual income of previous year</b>
Manufacturing	≤ 50 employees	≤ MMK500 million	
Labour intensive production or piecework business	≤ 300 employees	≤ MMK500 million	
Wholesale business	≤ 30 employees		≤ MMK100 million
Retail business	≤ 30 employees		≤ MMK50 million
Service business	≤ 30 employees		≤ MMK100 million
Other types of business	≤ 30 employees		≤ MMK50 million

*Medium enterprises*

<b>Types of business</b>	<b>No. of permanent employees</b>	<b>Capital investment excluding land value</b>	<b>Annual income of previous year</b>
Manufacturing	≤300 employees	Above MMK500 million to MMK1,000 million	
Labour intensive production or piecework business	≤600 employees	Above MMK500 million to MMK1,000 million	
Wholesale business	≤ 60 employees		MMK100 million to MMK300 million
Retail business	≤60 employees		MMK50 million to MMK100 million
Service business	≤ 100 employees		MMK100 million to MMK200 million
Other types of business	≤ 60 employees		MMK50 million to MMK100 million

## Tax reliefs

Any company from the Prioritized Sectors can benefit from the following:

- Extension of the deadline for the payment of corporate income tax for first and second quarters (ending on 31 March and 30 June 2020) until 30 September 2020;
- Extension of the deadline for the payment of monthly commercial tax until 30 September 2020 for the period 31 March to 31 August 2020; and
- Exemption of advance income tax of 2% on exports until 30 September 2020.

## **III. Personal Income Tax**

While not formally announced, some township tax offices further allow employers to file and pay the April personal income tax for their employees together with the May personal income tax.

## **C. HR Compliance / Employment Law**

### **I. Temporary or Permanent Closing of Business**

Depending on the nature of the employer's business, different laws may be applicable. The Factories Act 1951 as amended in 2016 shall apply primarily to factories (which are basically defined as premises where manufacturing process are being carried-out). The general Shops and Establishment Law 2016 shall apply to any other type of commercial establishments (e.g. businesses and industrial establishment not relevant to the Factories Act 1951).

#### Factories Act 1951

If the operator of a factory wants to close the factory, prior notice of not less than one (1) month of the closing of the factory stating the reasons, shall be sent to the Factories and General Labour Law Inspection Department ("Inspector"). If for any reason such notice cannot be given, prior intimation shall be sent to the Inspector as early as possible before the factory is closed. If the factory is employing not more than 15 workers, the closing shall be intimated to the Inspector within seven (7) days after closing down.

If a factory is only temporarily closed, it must send another notice to the Inspector once work is resumed.

#### Shops and Establishment Law 2016

Any employer wishing to temporarily or permanently close a shop or establishment shall give at least ten (10) days prior notice of such closure to the Inspector, using Form 3 "Notice of temporary/permanent closure of shop/establishment" of the Shops and Establishment Rules 2018.

If an employer re-opens a shop or establishment which was closed temporarily, he shall send Form 1 "Notice of opening of shop/establishment" of the Shops and Establishment Rules 2018 to the Inspector.

## **II. Payment of Salaries**

We are currently not aware of any laws and specific provisions that would allow the employer to suspend the payment of wages during temporary closure / suspension of business activities.

The Payment of Wages Law 2016 provides that any employer encountering difficulties to make payment on reasonable grounds due to any unexpected conditions shall, with the consent of the workers, inform the Inspector within seven (7) days before the end of the period for payment of wages to the Department. Further, if a court of law rules that the delay or failure to disburse remuneration is due to the arising of unforeseen contingencies, including natural disasters leading to an inability to disburse remuneration, the disbursement of remuneration may be suspended or exempted.

With regard to these clauses, we would argue that they only refer to the "disbursement" of salary, i.e. when the actual payment is made, but do not address whether salaries are payable or not. Accordingly, we would submit that "not paying" is not an option, unless employer and employees mutually agree on a change of the terms of employment, or the employees are terminated in accordance with the applicable requirements. In this regard, it was recently announced by the Myanmar Investment Commission ("MIC") that employers not complying with the severance obligations for laid-off workers will be banned from continuing operations in Myanmar.

### III. Termination of Employees

Myanmar employment laws provide few details on resignation by the employee and termination or dismissal by the employer. Conditions and requirements are primarily governed by the policies of the Department of Labour, most importantly the official Employment Contract Template and Notification No. 84/2015.

While the law does not provide for any specific reasons for the termination of an employee, under the current policies of the Department of Labour, an employment contract may be terminated in case of the “suspension of business due to unforeseeable events“. Kindly note that it has not yet been confirmed by the Myanmar labour authorities whether the outbreak of the coronavirus may qualify as an unforeseeable event. Alternatively, the employer may terminate an employee by giving one (1) months’ notice.

In any case, the employer would be required to make payment of statutory severance pay (in addition to the notice period or payment in lieu of the notice):

<u>Term of Employment</u>	<u>Severance Amount</u>
Less than 6 months	N/A
6 months – 1 year	0.5 month’s salary
1 year – 2 years	1 month’s salary
2 years – 3 years	1.5 months’ salary
3 years – 4 years	3 months’ salary 4
4 years – 6 years	months’ salary 5
6 years – 8 years	months’ salary 6
8 years – 10 years	months’ salary 8
10 years – 20 years	months’ salary 10
20 years – 25 years	months’ salary 13
25 years or more	months’ salary

Alternatively, the employer and the employee may cancel the employment contract upon mutual agreement.

### IV. Home Office

Under the current legal framework and practices of the Department of Labour, an employment contract stipulates the place of work of the employee. Employees do not have a unilateral right to change the place of work without permission/ consent of the employer.

The Employment and Skills Development Law 2013 states that the employer and the employee may upon mutual agreement amend the terms and conditions of the employment contract (if the employment contract is registered with the Township Labour Office, it would further be necessary to obtain official approval).

An exemption may apply under Notification No. 19/2020, which was published by the Ministry of Health and Sports on 28 February 2020. According to this Notification, an employer shall request employees suffering from symptoms to work remotely (if the nature of the job permits).

Similar exemptions may arise, if the government announces mandatory work from home or suspension of work for specific sectors or in general.

### V. Reduced Working Hours

Under the current legal framework, while an employer may reduce working hours of an employee, he may not unilaterally reduce the employee’s remuneration.

According to the Employment and Skills Development Law 2013 and the current practices of the Department of Labour, an employment contract has to mention the paid working hours. Consequently, the employer and employee would have to find a mutual agreement to reduce the paid working hours (please see above requirements).

## VI. Social Security

### 1. Recent Changes on Social Security Fund Contributions and Employee Benefits

Unless exempted, employers of five (5) or more employees must register their employees with the Social Security Fund under the Social Security Law 2012. Currently, the total rate of contribution is 5% of the wages or salary of an employee, limited to a maximum amount of MMK 15,000 (of which 3% shall be contributed by the employer and 2% shall be contributed by the employee), to be paid monthly before the 15<sup>th</sup> day of each calendar month .

#### Notification No. 63/2020

On 20 March 2020, the Minister's Office of the Ministry of Labour, Immigration and Population published Notification No. 63/2020, extending the monthly payment-deadline for social security contributions from the 15<sup>th</sup> of the month following the salary payment to a maximum of three (3) months (affected employers should notify their social security office that payments will be delayed).

#### Notification No. 64/2020

Further, the Minister's Office of the Ministry of Labour, Immigration and Population published Notification No. 64/2020 on 20 March 2020, allowing workers who were laid-off due to COVID-19 to continue enjoying the following social security benefits under the Social Security Law 2012:

- extended right of medical treatment for one (1) year from the date of redundancy; and
- extended right to cost of medicines and travel costs for one (1) year from the date of redundancy.

#### Directive No. 1/2020

On 20 March 2020, the Department of Labour published Directive No. 1/2020 listing compliance requirements for employers who closed down their workplace due to COVID-19:

##### *Employers*

A registered employer must inform the Township Social Security Office within ten (10) days if he suspends work and/or closes-down business. Further, the employer must keep records on temporary opening or closing of the establishment

(Form-6). Upon such notice, the Township Social Security Office will conduct on-site inspection and suspend contribution requirements, if verified.

Upon re-opening of the business, the employer shall be required to notify the authorities within ten (10) days and shall resume payment of social security contributions.

##### *Employees*

Employees made jobless due to temporary or permanent closure of workplaces or reduction of workforce by an employer shall be entitled to the following benefits:

- Medical treatment for a period not exceeding six (6) months while unemployed;
- Cash benefit amounting to 60% of remuneration (based on a prescribed salary cap) for up to six (6) months in case of sickness while unemployed, provided the employee has contributed to the social security fund for at least four (4) months within the six (6) months prior to the date of sickness;
- Cash benefits in respect of maternity amounting to 70% of remuneration (based on a prescribed salary cap) in case of maternity while unemployed, provided the employee has contributed to the social security fund for at least six (6) months within the twelve (12) months prior to the date of commencement of maternity leave. In addition, the employee may be entitled to the following types of benefits including maternity costs:
  - Cash benefit for 14 weeks (18 weeks in case of twins) of 70% of average remuneration in the twelve (12) months prior to the date of commencement of maternity leave in case of live birth (based on a prescribed salary cap);
  - 50% of average monthly wage (based on a prescribed salary cap) as maternity expenses for single delivery, and 100% of average monthly wage (based on a prescribed salary cap) for twin delivery; abortion allowance up to a maximum of six (6) weeks of 70% of average remuneration (based on a prescribed salary cap);
  - Eight (8) weeks benefit of 70% of average remuneration (based on a prescribed salary cap) for adoption of a child younger than one (1) year;
  - Medical treatment for up to one (1) year of a child younger than one (1) year ;
  - 15 days baby-care benefit of 70% of average remuneration (based on a prescribed salary cap) for the insured husband of a wife giving birth;
  - Maternity cost allowance of 25% (50% for twins) of average remuneration (based on a prescribed salary cap) for insured husband of a wife giving birth;



- Funeral costs allowance for the unemployed, provided the employee has contributed to the social security funds for at least two (2) months within the immediate three (3) months prior to death, or deemed as contributed in case of the absence of contributions in the two (2) months immediately prior to death;
- Cost of travel and medicines for a maximum of six (6) months while unemployed;
- Medical treatment for retired persons who have contributed to the social security fund for at least 180 months under Social Security Act 1954 or the Social Security Law 2012.

Insured employees made jobless by employers will be entitled to the following benefits if they voluntarily continue participation in the health and social security insurance scheme in accordance with the social Security Law 2012, by making total contribution of 4% (employer's 2% and employee's 2%):

- Medical treatment;
- Cash benefits related to maternity (as outlined above);
- Cost of medicines, travel cost;
- Medical treatment for retired persons who have contributed to the social security fund for at least 180 months under Social Security Act 1954 or the Social Security Law 2012; and
- Funeral allowance.

## 2. Unemployment Fund

The Social Security Law 2012 provides for unemployment benefits if an employee is unemployed as a consequence of termination because of a permanent close-down of business (subject to the condition that the employee has paid social security contributions for a minimum of 36 months). In practice, however, no such fund providing for unemployment benefits has been established yet (which should mean that an employee cannot enjoy such benefits for the time being).

## VII. Occupational Safety & Health

While various laws – such as the Factories Act 1951 and the Shops and Establishment Law 2016 – contain safety and health related provisions, the Myanmar government worked on a unified framework for years.

On 15 March 2019, the Pyidaungsu Hluttaw (Union Parliament) finally enacted the Occupational Safety & Health Law. However, this new law has yet to come into force, pending notification by the President.

### 1. General Requirements

#### Factories Act 1951

The Factories Act 1951 contains a number of specific obligations for the operator of a factory, such as:

- Implement measures for cleanliness and the disposal of waste and effluences;
- Implement measure to ensure good ventilation and equable temperature;
- Implement measures to prevent dust and fume;
- Implement measure for artificial humidification;
- Implement measures to not overcrowding;
- Provide the lighting artificial and a sufficient supply of wholesome drinking water; and
- Providing sufficient latrines and urinals and spittoons.

#### Shops and Establishment Law 2016

According to the Shops and Establishment Law 2016, the employer shall comply with the following general obligations:

- Implement proper measures for cleanliness, freedom from odours and sanitary condition;
- Implement measures to ensure good ventilation and lighting;
- Implement measures to prevent noise in excess of the level prescribed;
- Implement measures to prevent excessively high temperatures and for fire prevention; and
- Provide sufficient first-aid kits and medicaments for employees.

#### Official Employment Contract Template

Further, according to the template contract of the Department of Labour, employers shall give special priority to workplace safety and health in accordance with the needs of the business.

While the meaning of this provision is quite vague, it can be assumed that under the current circumstances, the employer shall take appropriate measures (e.g. drawing-up action plans and internal guidelines on health and safety) and ensure compliance with the measures, instructions and guidelines published by the Myanmar authorities.

## 2. COVID-19 Instructions

The Ministry of Health and Sports designated COVID-19 a communicable disease under the Prevention and Control of Communicable Diseases Law 1995.

### Instructions of the Ministry of Health and Sports

On 30 March 2020, the Ministry of Health and Sports publishes instructions, according to which employers shall help to prevent the spread of COVID-19 as follows:

- If an employee has a fever, is coughing or has breathing problems, the employer is instructed to ask the employee to stay home;
- If an employee is pregnant, the employer is instructed to ask the employee to stay at home;
- If an employee lives with someone in quarantine, the employer is instructed to ask the employee to stay home;
- Employees are instructed to wash their hands thoroughly and wear masks;
- The workplace should be regularly sprayed and washed;
- Transportation provided by the employer (buses, cars) should be sprayed and cleaned;
- Employee work stations should be three (3) feet apart;
- Biometric systems should be deactivated; and
- Construction companies should arrange to have no more than 50 employees on a construction site at any time.

### Directive of the Ministry of Health and Sports

The Department of Public Health of the Ministry of Health and Sports (“MOHS”) issued Directives to factories and workplaces to prevent the spread of COVID-19.

#### *Employers*

According to the latest Directive, employers shall comply with the following:

- Provide supervision to prevent workers who meet the following criteria from coming to the workplace:
  - suffering from suspicious symptoms such as fever (38°C /104°F or above), coughing, breathing difficulties and fatigue;
  - pregnant;
  - co-resident with a person suspected of suffering from COVID-19;
- Provide ferry services for employees to come to and return from work. On the ferries, provide hand-sanitizing fluid, single-use

tissues, surgical masks. During the journey play health awareness videos or sound files.

#### **At entry/exit points of the workplace:**

- Prescribe different arrival/departure times to/from work according to department;
- Install non-touch thermometers or thermal scanners, and allow entry into workplace of all employees only after undergoing body temperature measurement. In case of body temperature above 38°C /104°F, prevent entry to the workplace and allow rest.
- Avoid crowding at entry/exits to the workplace, and arrange for employees to be able to enter/exit at a distance of three (3) feet from each other. Provide advance notice that this procedure will be implemented.
- Assign supervisors at entrances to check attendance of employees (avoid signing on same sheets of paper or registration with finger-print scanners.)
- With regard to delivery cars, make drivers remain in the vehicle and avoid close contact with loading/unloading workers. Tell workers to frequently and systematically wash their hands before, during and after loading/unloading of goods.
- Provide adequate stations for handwashing.

#### **At each handwashing station:**

- Supervise workers at times of entry to and exit from the workplace to ensure handwashing.
- Provide adequate needed supplies (water, soap, hand sanitizer etc.) in aid of systematic hand washing by own employees.
- Affix posters describing handwashing procedure at each station where employees wash their hands, and also provide supervision to ensure proper hand washing.
- Provide materials (for example, tissue papers) to dry hands after washing.

#### **At toilets:**

- Provided arrangements so that large number of employees are not waiting to use toilets.
- Provide supervision toward frequent sanitization of toilet doors, flushing handles/buttons.
- Provide adequate waste bins in toilets, and arrange for frequent collection and systematic disposal. Carry out to prevent leakages in waste water and sewage disposal.

#### **In restrooms and canteens:**

- Arrange for employees to be able to rest and consume food and

beverages at three (3) feet distance from each other.

- Supervise workers on entry to restrooms/canteens and prior to eating to ensure handwashing with soap or hand sanitizers.
- Systematically clean table surfaces and places touched by many persons with soap and water or sanitizing fluid containing 70% alcohol.
- Supervise exit from canteens to ensure handwashing.

#### **In order to avoid working too closely:**

- Arrange for working at a distance of three (3) feet from one another, and to avoid grouping of people in the work area.
- Systematically dispose single-use personal protection equipment after use. Clean non-single-use PPEs after use and supervise to prevent sharing between workers.
- Supervise to avoid use of elevators as much as possible, and to ascend/descend using ordinary stairs. In case of unavoidable use of lifts, provide supervision to ensure that no more than four (4) passengers are facing each other.
- Arrange good ventilation of work areas. Keep windows open.

#### **In holding meetings/awareness sessions:**

- Avoid meetings with large number of people, and if unavoidable, arrange each participant to be at least three (3) feet away from each other, and hold the meeting only in well ventilated places.
- Avoid providing health education in factories/workplaces by assembling large crowds of people. Share health awareness information individuals or teams of employees through distribution of posters, handouts to relevant sites, or through sound files to which can be played at relevant sites
- In carrying out health education, provide information, warnings and guidelines issued by the MOHS and instruct to comply with them.
- Information published by MOHS be obtained through visiting the official website or Facebook page of MOHS ([www.mohs.gov.mm](http://www.mohs.gov.mm) and [www.facebook.com/MinistryOfHealthAndSportsMyanmar](https://www.facebook.com/MinistryOfHealthAndSportsMyanmar)) or through QR Code scanning. Refer to and utilize facts and up-to-date actions, WHO announcements, knowledge related to prevention and advice related to use of mouth and nose coverings, sound files and radio broadcasts in respect of protection against COVID-19.
- Provide supervision to prevent dissemination of fake news among employees.

#### **Sanitation:**

- Supervise frequent cleaning of equipment used daily by employees with 70% ethanol. For example
  - Utilities such as tables used by employees;
  - Water taps and cleaning equipment/materials;

- Toilet seats and flushing handles;
- Door handles, stair rails, lift buttons;
- Operation machinery and equipment; and
- Computers and related equipment, office equipment such as copiers;
- Floors must be washed at least once a day using 0.5% Sodium Hypochlorite Solution or 1% Chlorine solution.
- Carry out frequent garbage collection and systematic disposal every day.

#### *Employees*

#### **Employees shall comply with the following:**

- Frequently wash hands using soap and water. Do not touch eyes, nose and mouth without having washed hands. Pay attention to personal hygiene. Eat nutritious food and sleep and rest well.
- As much as possible avoid going to crowded places other than own workplace, house/quarters.
- In case of suspicious symptoms of fever (above 38°C /104°F), coughing, breathing difficulties and fatigue, do not enter the workplace, but avoid coming into contact with large numbers of people, and undergo treatment as soon as possible at the nearest health department, after giving notice in advance by phone.
- Come to and return from work using private transport as much as possible, avoiding public transport.
- Upon arrival back at quarters or home, immediately wash clothing worn at work and take a shower.

#### *Supervisors*

#### **Supervisors shall comply with the following:**

- Demonstrate systematic handwashing to employees in own department, and provide supervision for the same.
- Using non-touch thermometers at entrance/exits of the workplace, monitor employees for fever before entry to the workplace, disallow entry to the workplace to and arrange for medical treatment of those having body temperature higher than stipulated limits.
- Constantly monitor employees of own department for suspicious symptoms, and in case of discovery of a person with suspicions of infection, to immediately transport to the nearest health department, providing advance notice by phone.

Further, construction sites shall not have more than 50 employees per site and keep daily records on the number of workers attending the site.

### 3. Region-Specific Measures

#### Directive of the Yangon Regional COVID-19 Protection, Control and Treatment Committee

On 28 March 2020, the Yangon Regional COVID-19 Protection, Control and Treatment Committee (“Committee”) issued a directive (Letter No. 106/264/COVID-19/Committee 2020) to carry-out specific lockdowns .

#### Directive of the Yangon Regional COVID-19 Protection, Control and Treatment Committee

By letter dated 2 April 2020, the Committee issued another notification pursuant to which all residents of Yangon shall practice strict stay at home during the Thingyan public holidays starting from 10 April to 19 April 2020 (except for errands and health care reasons).

## D. Supply Chain and Commercial Contracts

### I. Force Majeure

The term “force majeure” originated from the French civil law system. Traditionally, such an event must be unforeseeable, insurmountable and external. In Myanmar, there is no general legal concept of force majeure; rather, force majeure is a creature of contract. Myanmar usually interprets a force majeure event as an exceptional circumstance, which prevents one or both parties from fulfilling their obligations under a specific contract.

The first step to consider would be to check whether the contract provides a force majeure clause and provisions regarding business continuity and disaster recovery obligations.

While most contracts usually contain some form of force majeure clause, independent of the governing law of the specific contract, the scope of the circumstances included in the definition of force majeure and the consequences of the force majeure may differ from contract to contract.

On 11 March 2020, the World Health Organization officially qualified COVID-19 as a pandemic. Many contractual force majeure clauses explicitly include an epidemic or pandemic in their definition, in which case the official qualification leaves little room to interpretation. However, even if the contractual

definition of force majeure does not expressly mention a pandemic, some consequences of COVID-19, such as raw material supply shortages and government lock-downs, would customarily constitute a force majeure event.

While every contract must be reviewed individually, a common consequence of force majeure would be, that the contract can be suspended or its performance delayed or reduced until the force majeure event comes to an end, without such delay of the performance of the contractual duties constituting a breach of the contract.

Contracts may however also provide for termination rights in the event of a (continuing) force majeure.

## II. Absence of Force Majeure clause

If the contract in question does not provide a force majeure clause or the scope of the clause does not cover the specific reason for delay or non-performance, the affected party may still be able to rely on general principles of law. While in some legal systems, there might be the option to rely on a general legal doctrine of force majeure, in most jurisdictions, another doctrine worth considering would be the concept of “frustration of contract”. In Myanmar, the frustration of contract is governed by sec. 56 of the Myanmar Contract Act 1872.

Generally speaking, frustration occurs when, without the default of either party, a contractual obligation has become physically or commercially incapable of being performed because the circumstances in which the performance is called for would render it radically different from that which was undertaken by the contract. The threshold for the contract to be considered frustrated is usually very high. Not every event which prevents the performance of a contract will constitute frustration. The event must be fundamentally different from one originally contemplated by the parties.

Pursuant to sec. 56 of the Myanmar Contract Act 1872, in the event that *“a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”* Therefore, the contract is automatically discharged, meaning neither party has to comply with future obligations.

## E. Corporate Compliance

One main concern of the current COVID-19 situation is the continued compliance with corporate governance requirements under the Myanmar Companies Law 2017 and the Myanmar Investment Law 2016.

Changes of a company's corporate details have to be registered with the Directorate of Investment and Company Administration, and the approval of the annual (audited) financial statements as well as the Annual General Meeting for the financial year 2019 (1 April – 30 September 2019) are due on or before 30 June 2020.

While the Myanmar government has not yet announced any relaxation of the general corporate compliance requirements, the new Myanmar Companies Law 2017 and the implementation of the new MyCO online company register ensure that companies can comply with the law without having to convene physical meetings.

## I. Meetings and Written Resolutions

Under the Myanmar Companies Law 2016 and the new model constitution, Board of Directors' meetings and shareholders' meetings may be held by telephone, audiovisual linkup or other instantaneous communication media, not requiring personal attendance in physical meeting.

Further, resolutions of the Board of Directors or the shareholders of a private company may be passed in writing in lieu of holding a meeting (sec. 156 Myanmar Companies Law 2017). In this respect, the law expressly stipulates that separate copies of the same document may be signed, and the resolution be passed when the last person entitled to vote has signed the resolution (signing in counterparts).

## II. E-Signatures

One question that remains unclear is the use of electronic signatures. While the Myanmar legislation, including the Evidence Act 1872, have been partially updated to address the use of electronic signatures, this is not yet generally implemented.

Some regulations (e.g. for Mobile Financial Services) explicitly provide for the option of electronic signatures, but many other transactions until now require original signatures and

submission of original documents, either due to official policies or the individual requirements of the involved contract parties, administrative authorities and statutory auditors.

Our recommendation therefore remains to execute written resolutions with a hand-written signature. Once the resolution has been signed by all directors or shareholders, the appointed company secretary and/or a director of the company may issue an original signed certified extract or copy of the duly passed resolution, which may be submitted in lieu of the complete set of signed original counterparts (sec. 31 (h) Myanmar Companies Law 2017). The original signed documents may then be filed and maintained in the corporate secretarial records at a later time.

## F. Banking

While not a regulatory change, various Myanmar banks have upgraded their online banking facilities to address the COVID-19 situation. In particular, foreign currency transactions between participating banks have been enabled to allow direct transfers between bank accounts at different banks.

Further, online banking may now be available for payroll services of various private banks. Please contact your bank for further details

## G. Your Contact



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# IV. Singapore

## A. Overview

The Singaporean government has progressively introduced tighter measures in order to control the COVID-19 outbreak.

Until 18 February 2020, the government was issuing a Leave of Absence (“LOA”) to the employees coming back to Singapore from “affected regions”. After that date, the government started to issue Stay-Home Notices (“SHN”). Unlike under LOA, the employees under SHN are prohibited to leave their residence and must benefit from the support of their employer if they are unable to access daily necessities.

Further, the government can also issue Quarantine Order (“QO”) under the Infectious Diseases Act to isolate the individuals who are, or suspected to be, infected or carriers of the disease.

There are severe penalties involved if the individual does not comply with the LOA, SHN or QO.

Since 24 March 2020, all gathering outside work and school have been limited to maximum 10 people, all bars and entertainment venues (nightclubs, cinemas, karaoke outlets) have been closed and all religious services, events and mass gatherings have been suspended.

Since 7 April and until 4 May 2020 (inclusive), heightened safe-distancing measures have been implemented (hereinafter referred to as the “Circuit Breaker Period”).

During the Circuit Breaker Period, only essential services that support daily needs (food related services, healthcare, social services, banking and financial services, public transport/services) will remain open, with safe-distancing measures in place. Schools will move to home-based learning, workplaces, other non-essential services and retail outlets (recreation venues, sports and recreation facilities... etc.) will be closed.

Under a new law, all residents of Singapore will have to stay at home except to buy daily necessities or for urgent medical needs. They will not be allowed to hold social gatherings during this period and will have to limit social contact to their immediate family members.

Considering the regional and global developments, the Singaporean government has introduced new measures and

enhanced existing ones to support businesses, manage their manpower and help them to release some of the pressure on their cash flow.

The purpose of this chapter is to provide you with an overview of the current support schemes available and possible strategies to adopt in order to manage current operational challenges in Singapore.

## B. Government Support Measures

### I. Support Measures for Employers

#### 1. Quarantine Order Allowance (“QO”)

In Singapore, employers must treat their local or foreign employees who are issued with a QO, as being on paid hospitalization leave and pay their salaries as normal.

Employers can apply for a daily SGD 100 allowance per affected employee for the duration of the QO. Please note that employers can only apply for said allowance at the end of the quarantine.

For self-employed persons, they can only apply if they are either a Singapore Citizen or a Permanent Resident (“PR”).

#### 2. Leave of Absence (“LOA”) and Stay-Home Notice (“SHN”) Support Programme

From a business’ perspective, LOA/SHN could entail further disruptions since the employee could potentially be unable to work if placed under the SHN.

Depending on the nature of the business, the employer could consider flexible working arrangements for their affected employee. MOM has decided to support those businesses which cannot implement flexible working arrangements through the LOA/SHN Support Programme.

Under the LOA/SHN Support Programme, eligible employers can apply for a daily allowance of SGD 100 per affected worker for the duration of paid LOA or SHN. Eligible employers will also qualify for levy waiver for affected foreign workers for the LOA or SHN period.

In order to qualify as an eligible employer the following must be met:



- The employer must be a company registered in Singapore;
- The affected employees must be Singapore Citizens, PRs, or work pass holders (including Employment Pass and S Pass holders) but not Foreign Domestic Workers (“FDW”);
- The employer must have granted additional paid leave to the affected employee for the LOA or SHN period on top of their annual leave entitlement or had treated the duration of LOA or SHN as paid hospitalisation leave;
- The affected employees must have complied fully with LOA or SHN requirements;
- The employer must have obtained MOM’s prior approval for the affected employee who is a work pass holder to return from abroad;
- The affected employees should not have been able to perform work remotely;
- In addition, the employee must have been working for the employer before returning from any of the affected areas and being placed on LOA or SHN.

The employer will not be eligible for support if the employee has travelled to a region after it was deemed as an “affected region” by the government i.e. travelled to Spain after 15 March 2020.

Self-employed persons can also apply for a daily SGD 100 support if they meet the criteria: be a Singapore Citizen or a PR and be placed on LOA or SHN. They will not be eligible if they have travelled to a region after it was deemed as an “affected region” by the government.

Employers who (proactively) have imposed a company LOA on their employees who returned from overseas between the 14 and 20 March 2020 will also be eligible for to receive this support. MOM will conduct checks on employees who are placed on company-imposed LOA, in order to ensure its compliance during the period. In order to be eligible for the support for company-imposed LOA the employer needed to notify MOM by 26 March 2020.

### 3. Temporary Scheme to Help Businesses Managing Manpower Disruption

This scheme was introduced by MOM from 2 March 2020 to support companies in the manufacturing and services sectors

and giving them flexibility to manage their manpower. This new measure will be in place for the next 6 months.

The main feature of this scheme is that businesses in the above mentioned sectors will be able to hire existing People’s Republic of China (“PRC”) work pass holders who are already working for other companies in Singapore. This way, businesses which are in need of manpower can take on those workers from business which are suffering an excess.

The Singapore Business Federation (“SBF”) will help with facilitating the transfer of workers between companies through the duration of the scheme.

### 4. Levy Waiver and Payment Extension

On 24 March 2020 MOM introduced levy waiver and payment extension measures to further support businesses cope during this period. In detail, those measures entail:

- Three months extension of the levy payment timeline to Small-and-Medium size Enterprises<sup>1</sup> (“SME(s)”: Currently, the payment for the Foreign Worker Levy (“FWL”) is due by the 14th of the following month from when its incurred and employers who fail to make payment on the due date will have their new and renewal work pass applications rejected. Two consecutive months of late or non-payment of levies will result in all existing work passes being revoked. Under this new levy payment deferment measure, SMEs have up to 5 months to pay their levies incurred every month. Employers who fail to make the payment by the end of the 5th month before revocation action kicks in. Please note, deferment in levy payment is considered late payment and will attract, as usual, a late payment penalty of 2% per month (capped at 30% of total outstanding levy). No application is required.
- Levy waiver for up to 90 days for foreign workers on overseas leave: Under the current system, MOM allows a levy waiver of 60 days for foreign workers on overseas home leave for at least 7 consecutive days. MOM will now extend this waiver to up to 90 days for foreign workers who are currently on overseas leave. Application with the Central Provident Fund (“CPF”) Board is required.
- Man-Year Entitlement<sup>2</sup> (“MYE”) refund for affected

<sup>1</sup> SMEs refers to companies incorporated in Singapore employing not more than 200 workers.

<sup>2</sup> The MYE is a Work Permit allocation system for workers from non-traditional source (NTS) countries and the People’s Republic of China. The NTS countries are: India, Sri Lanka, Thailand, Bangladesh, Myanmar and Philippines. The MYE shows the number of work permits holders a main contractor is entitled to employ based on the value of projects or contracts awarded by developers or owners.

construction companies with effect from 1 April 2020: MOM along with the Building and Construction Authority (“BCA”) have been working on a temporary scheme under which constructions firms will be able to make use of the refunded MYE within the next year to hire new employees or renew the existing ones. This will be available for 6 months from 1 April 2020. Companies will be able to apply for the MYE refund through the BCA.

On top of the above measures, on 6 March 2020, MOM introduced a waiver of the FWL due in April 2020 and a FWL rebate of SGD 750 in April 2020 for the levies paid this year for each Work Permit and S Pass holder.

## 5. Jobs Support Scheme (“JSS”)

The JSS is a temporary measure for 2020 introduced to aid businesses to keep their local employees through the economic uncertainty.

Under the enhanced JSS introduced by the Resilient Budget 2020, a cash grant of 25% (increased from 8%) on the first SGD 4,600 (up from SGD 3,600) of the gross monthly wages<sup>3</sup> of every Singapore Citizen or PR employee will be paid to employers by the government.

The JSS will also be extended to cover 9 months of employees’ wages (increased from 3 months).

	October 2019	November 2019	December 2019	Total
<b>Wages paid to local employee (excluding employer CPF)</b>	SGD 4,000	SGD 4,500	SGD 5,000	<b>SGD 13,500</b>
<b>Qualifying wage (capped at SGD 4,600)</b>	SGD 4,000	SGD 4,500	SGD 4,600	<b>SGD 13,100</b>
<b>Jobs Support payout to employer (25% of qualifying wage)</b>	SGD 1,000	SGD 1,125	SGD 1,150	<b>SGD 3,275</b>

Source: MOF Budget measures, Stabilisation and Support Package.

<sup>3</sup> Gross monthly wages include employee CPF contributions, but exclude employer CPF contributions.

In addition, under the JSS introduced by the Solidarity Budget 2020, a cash grant of 75% on the first SGD 4,600 of the April 2020 gross monthly wages<sup>3</sup> of every Singapore Citizen or PR employee will be paid to employers by the government.

	JSS will cover wages paid in:	CPF contributions for the relevant months must be made by:	JSS will be paid out by:
<b>Tranche 1 (Enhanced)</b>	14 February 2020	14 February 2020	End-April 2020
<b>Tranche 2 (New)</b>	14 May 2020	14 May 2020	End-July 2020
<b>Tranche 3 (New)</b>	14 August 2020	14 August 2020	End-October 2020

Source: IRAS JSS Tranches

**Procedure:** Employers do not need to apply for the scheme since the grant will be calculated based on the CPF contributions. Employers eligible for the additional tiers of support will be informed by the Inland Revenue Authority of Singapore (“IRAS”) closer to the date of the first pay-out.

The employer will be considered as a qualifying employer if they have made CPF contributions for their qualifying employees.

Please note, the grant will be treated as taxable revenue at the level of the recipient.

Below is an example on how the grant would be calculated under the enhanced JSS for the said relevant months:

With regards to the payment of the JSS, the government has introduced 2 more periods and amended the existing one.

<sup>4</sup> Types of businesses which will be supported by the enhanced JSS: Airlines, Airport ground handlers, Airport operators, Qualifying licensed hotels, Qualifying license travel agents, Qualifying gated tourist attractions, Cruise lines and cruise terminal operators and Purpose-built Meetings, Incentives, Conferences and Exhibitions venue operators.

<sup>5</sup> Licensed food shops and food stalls – including hawker stalls.

This payment schedule is now as follows:

The pay-out for the wages paid in April 2020 will be calculated based on wages paid in October 2019. The second and third pay-outs will be adjusted if there is a difference between the wages paid in April 2020 and the wages paid in October 2019. In addition to this increase, the government has introduced new support for those sectors which have been severely affected. This additional support will be provided to the aviation and tourism<sup>4</sup> (75% cash grant of the first SGD 4,600) as well as to the food services<sup>5</sup> sectors (50% cash grant on the first SGD 4,600).

## 6. Wage Credit Scheme (“WCS”)

The WCS was first introduced in 2013 for those employers who provided wage increases for Singapore Citizen employees. Currently under said scheme, the government co-funds wage increases for Singapore Citizen employees earning a gross monthly wage of up to SGD 4,000.

	Under First Extended WCS (2016-2017)			Under Second Extended WCS & Budget 2020 /2018-2020)		
Year	2016	2017	2018	2019		2020
<b>Qualifying Wage Increase</b>	\$300	\$800	\$600	\$800		\$900
<b>Govt Co-Funding</b>	20% x \$300 =\$60/mth	20% x \$800 =\$160/mth	20% x \$600 =\$120/mth	15% x \$800 =\$120/mth	The additional 5% x \$800= \$40/mth	15% x \$900 =\$135/mth
<b>Amount of Wage Credit</b>	\$60 x 12mth = \$720	\$160 x 12mth = \$1,920	\$120 x 12mth = \$1,440	\$120 x 12mth = \$1,440	\$40 x 12mth = \$480	\$135 x 12mth = \$1,215
<b>To be Paid in</b>	Mar 2 2020 Supplementary payout)017	Mar 2018	Mar 2019	Mar 2020	Jun 2020 (Budget 2020 Supplementary payout	Mar 2021

Source: IRAS Wage Credit Scheme.

The wage ceiling has been increased by the 2020 Budget to SGD 5,000 for wage increases given in 2019 and 2020. The government will also increase the co-funding ratio from 15% to 20% for wage increases from 2019 and from 10% to 15% for wage increases from 2020.

This scheme is applicable to all employers giving wage increases in 2013 - 2020 to Singapore Citizen employees who:

- received CPF contributions from a single employer for at least 3 calendar months in the preceding year;
- have been on the employer's payroll for at least 3 calendar months in the qualifying year (i.e. employer must have paid employee CPF contributions for at least three calendar months in qualifying year);
- have at least SGD 50 gross monthly wage increase (up to the Gross Monthly Wage ceiling); and
- must not also be the business owner of the same entity (i.e. sole proprietor of the sole proprietorship, or a partner of the partnership, or both a shareholder and director of a company).

Any payment received under this scheme is also treated as taxable revenue of the company.

**Procedure:** Application is not required. IRAS will notify eligible employers by post of the wage credit payable to them

by end March of the pay-out year. Pay-outs will be given to employers by 31 March of the pay-out year. Qualifying employers benefitting from Budget 2020 enhancements for the 2019 wage increases will receive a supplementary pay-out by end Jun 2020.

Payouts will automatically be credited to employers' GIRO bank account for Income Tax/GST. For those without GIRO accounts, the pay-out will be credited to their bank account that is registered with PayNow Corporate. Employers who are not already on these direct crediting modes have to sign up for these modes to receive their pay-outs.

## 7. Support for Self-Employed Persons ("SEPs")

MOM and the National Trades Union Congress ("NTUC") have agreed to develop a Self-Employed Person Income Relief Scheme ("SIRS") to support them and their business through these rough times.

Under the SIRS, the eligible SEPs will receive three quarterly cash pay-outs of SGD 3,000 each in May, July and October 2020.

The eligibility criteria to benefit from the SIRS are the following:

- be a Singaporean SEP;
- started to work as a SEP on or before 25 March 2020;
- earn a Net Trade Income of no more than SGD 100,000;
- live in a property with an annual value of less than SGD 21,000;
- do not own individually or with his/her spouse two or more properties;
- if married, the Assessable Income of the spouse does not exceed SGD 70,000.

The Ministry of Finance has also announced that the SIRS will include SEPs who also earn a small income from employment work.

Singaporeans SEPs aged 37 and over in 2020 who declared positive SEP income to the IRAS and CPF Board for Work Year 2018 do not need to apply and will be automatically notified via letter and SMS. Other eligible SEPs may apply for SIRS.

The Supplementary Budget 2020 also intends to extend the Self-Employed Person Training Support Scheme to December 2020 along with enhancing the hourly training allowance from SGD 7.50 to SGD 10, with effect from 1 May 2020. This measure is being enhanced in order to encourage SEPs to use the downtime to train and further their skills.

## II. Support Measures for Businesses

As part of the (Supplementary) Budget 2020 the Singapore government has introduced a Stabilisation and Support Package in order to support the Singaporean economy and help businesses to maintain their cash flow during the times of the COVID-19. The package provides financial support measures such as tax treatment measures, loan programmes and sector specific measures.

### 1. Tax Benefits and Reliefs

#### a) Corporate Income Tax Rebate

All companies taxable in Singapore under the Corporate Income Tax ("CIT") will benefit from a CIT rebate of 25% of tax payable for the Year of Assessment ("YA") 2020, meaning financial year ending 2019. The amount of the rebate will be capped at SGD 15,000.

**Procedure:** This rebate will be applied automatically and will lead to a deduction of 25% (capped at SGD 15,000) from a company's tax payable.

For example, if a company's taxable income (after exemptions, if any) is SGD 300,000, the amount of tax payable will be  $(\text{SGD } 300,000 \times 17\%) - (\text{SGD } 300,000 \times 25\%) = \text{SGD } 38,250$ . However, as the CIT rebate is limited to SGD 15,000, if a company's taxable income (after exemptions, if any) is SGD 500,000, the amount of tax payable will be  $(\text{SGD } 500,000 \times 17\%) - \text{SGD } 15,000 = \text{SGD } 70,000$ .

#### b) Automatic Extension of Instalment Payments and Deferral of Income Tax Payable

Companies that have to file their Estimated Chargeable Income ("ECI") will benefit from an additional two months of interest-free instalments to pay their CIT, provided that they comply with the following conditions:

- a. the company is filing its ECI within two months from its Financial Year end;
- b. the company is paying its CIT by GIRO;
- c. the company files its ECI between 19 February 2020 and 31 December 2020 or before 19 February 2020 and has ongoing instalment payment to be made in March 2020.

**Procedure:** IRAS will inform companies accordingly; benefit will apply automatically to companies that pay by GIRO.

To further ease the cash flow needs for companies in the immediate period, it was announced in the Supplementary Budget on 26 Mar 2020 that all companies with CIT payments due in the months of April, May and June 2020 will be granted an automatic three-month deferral of these payments. The CIT payments that are deferred from April, May and June 2020 will be collected in July, August and September 2020 respectively. This relief measure complements the automatic extension of two months interest-free instalments as stated above.

**Procedure:** Eligible companies can expect to receive a letter from IRAS by 15 April 2020.

#### c) Carry Back of the Unabsorbed Capital Allowances and Trade Losses

Currently, the companies taxable in Singapore under the CIT are only allowed to carry back their unabsorbed capital

allowances and trade losses to one immediate preceding YA.

Under the Stabilisation and Support Package, they will be able to carry them back up to three immediate preceding YAs within the limit of SGD 100,000.

This option is limited to the YA 2020. Only if a company incurs losses or has unabsorbed capital allowances in YA 2020, these can be carried back to the preceding three years.

#### **d) Option to Accelerate Write-Off and Deduction**

The companies taxable in Singapore under the CIT will be given the option to accelerate:

- the write-off of the cost of acquiring plant and machinery during the FY 2020 and incurred for FY 2021 over two years;
- the deduction of expenses incurred on renovation and refurbishment in FY 2020 and incurred for FY 2021 in one year.

#### **e) Property Tax Rebate**

Certain commercial properties badly affected by COVID-19 (such as hotel buildings; serviced apartment buildings; meetings, incentives, conventions and exhibitions spaces; premises of international airport/cruise/regional ferry terminal; shops and restaurants; premises of tourist attractions) will be granted a Property Tax ("PT") rebate of 100% during the period between 1 January 2020 to 31 December 2020.

Other non-residential properties such as offices and industrial properties will get a 30% rebate.

The following premises are excluded if they are used or intended to be used:

- for any residential purposes; or
- as a facility for the exclusive use of residents of residential premises such as gym, function and meeting space and club lounge, whether with or without their guests.

Further, no rebate will be given for property tax on vacant land or land under development.

**Procedure:** IRAS will inform owners of qualifying non-residential properties on their property tax rebates by 31 May 2020. Owners are not required to submit any claims for the rebate. Owners of qualifying properties can expect to receive their refunds by 30 Jun 2020.

For tenants, please note that the Minister for Law introduced a law to ensure that property owners pass on the PT rebate in to their tenants and directly ease the cash flow and cost pressures faced by tenants. For properties that are eligible for 100% property tax rebate, this is equivalent to more than one month's rental. We are happy to assist you with your communication with your landlord in order to enquire about respective rental reductions.

## **2. Loan Programmes**

### **a) Enterprise Financing Scheme – Small and Medium Enterprise Working Capital Loan**

The Small and Medium Enterprise ("SME") Working Capital Loan ("WCL") was introduced in October 2019 under the Enterprise Financing Scheme ("EFS") to help SMEs access financing for their working capital needs. The Enterprise Financing Scheme – SME Working Capital Loan ("EFS-WCL") is available to SMEs<sup>6</sup> across all industries from March 2020 to March 2021.

Under the EFS-WCL, SMEs can now take up a loan of up to SGD 1 million (instead of usually SGD 300,000) for a maximum period of 5 years. In addition, the government's risk-share will be enhanced to 90% (instead of usually 50% to 70%).

In addition, SMEs may now request for deferment of principal repayment for 1 year, subject to assessment by the participating financial institutions<sup>7</sup>.

Companies interested to benefit from the EFS-WCL can apply

with the participating financial institutions, provided they fulfil the following requirements:

<sup>6</sup> For "SME Working Capital", the SME definition refers to maximum group revenue of SGD 100 million or maximum employment of 200 employees.

<sup>7</sup> CIMB Bank Berhad, DBS Bank Ltd, Ethos Capital Ltd, Hong Kong and Shanghai Banking Corporation, Hong Leong Finance Ltd, IFS Capital Ltd, Maybank Singapore Ltd, ORIX Leasing Singapore Ltd, Oversea-Chinese Banking Corporation Ltd (OCBC Bank), Resona Merchant Bank Asia Ltd, RHB Bank Berhad, Sing Investments & Finance Ltd, Singapura Finance Ltd, Standard Chartered Bank, United Overseas Bank Ltd (UOB Bank).



- be a business entity registered and physically present in Singapore<sup>8</sup>;
- at least 30% owned directly or indirectly by Singapore Citizen and/or Singapore PRs, determined by the ultimate individual ownership;
- maximum Borrower Group<sup>9</sup> revenue cap of SGD 500 million for all enterprises; and
- maximum group revenue of SGD 100 million or maximum employment of 200 employees.

**Procedure:** The approval of the loan and the interest rate remains subject to the discretion of the financial institution. We are happy to assess your eligibility and assist with the loan application process.

#### b) Enterprise Financing Scheme – Trade Loan

Administered by Enterprise Singapore, the Enterprise Financing Scheme – Trade Loan (“EFS-TL”) supports Singapore-based enterprises’ trade financing needs, which include the financing of short-term import, export, and guarantee needs.

The EFS-TL, which is available to enterprises in all industries, will be enhanced for one year, from 1 April 2020 to 31 March 2021. Qualifying enterprises can now take up a maximum loan of SGD 10 million (from usually SGD 5 million) for a maximum period of 1 year. The government’s risk share will be increased to 90% (from usually 70%).

Companies interested to benefit from the EFS-WCL can apply with the participating financial institutions<sup>10</sup>, provided they fulfil the following requirements:

- be a business entity registered and physically present in Singapore<sup>11</sup>;
- at least 30% owned directly or indirectly by Singapore Citizen and/or Singapore PRs, determined by the ultimate individual ownership; and

- maximum Borrower Group<sup>12</sup> revenue cap of SGD 500 million for all enterprises.

**Procedure:** The approval of the loan and the interest rate remains subject to the discretion of the participating financial institutions. We are happy to assess your eligibility and assist with the loan application process.

#### c) Temporary Bridging Loan Programme (“TBLP”)

The TBLP was introduced in March 2020, initially to provide additional cash flow support to tourism sector enterprises for 1 year. However, it has now been extended to all sectors, and is available until 31 March 2021.

Eligible enterprises may borrow up to SGD 5 million under the TBLP, with the interest rate capped at 5% per annum. The government will provide 90% risk-share on these loans.

Eligible enterprises under the TBLP may also apply for up to 1 year deferral of principal repayment to help manage their debt, subject to assessment by the participating financial institutions<sup>13</sup>.

Companies interested to benefit from the EFS-WCL can apply with the participating financial institutions, provided they fulfil the following requirements:

- be a business entity registered and physically present in Singapore<sup>14</sup>;
- at least 30% owned directly or indirectly by Singapore Citizen and/or Singapore PRs, determined by the ultimate individual ownership.

**Procedure:** Those companies interested to benefit from the TBLP can apply with the participating financial institutions.

8 ACRA registered Sole Proprietorship, Partnership, Limited Liability Partnerships and Companies.

9 Borrower Group consists of the following: (i) borrower and (ii) corporate shareholders that hold more than 50% of the total shareholding of the company and any subsequent corporate parents and subsidiaries.

10 DBS Bank Ltd., Hong Kong and Shanghai Banking Corporation, Hong Leong Finance Ltd., IFS Capital Ltd., Maybank Singapore Ltd., Oversea-Chinese Banking Corporation Ltd. (OCBC Bank), Resona Merchant Bank Asia Ltd., RHB Bank Berhad, Standard Chartered Bank, United Overseas Bank Ltd. (UOB).

11 ACRA registered Sole Proprietorship, Partnership, Limited Liability Partnerships and Companies.

12 Borrower Group consists of the following: (i) borrower and (ii) corporate shareholders that hold more than 50% of the total shareholding of the company and any subsequent corporate parents and subsidiaries.

13 CIMB Bank Berhad, DBS Bank Ltd., Ethos Capital Ltd., Hong Kong and Shanghai Banking Corporation, Hong Leong Finance Ltd., IFS Capital Ltd., Maybank Singapore Ltd., ORIX Leasing Singapore Ltd., Oversea-Chinese Banking Corporation Ltd. (OCBC Bank), Resona Merchant Bank Asia Ltd., RHB Bank Berhad, Sing Investments & Finance Ltd, Singapura Finance Ltd., Standard Chartered Bank, United Overseas Bank Ltd.

14 ACRA registered Sole Proprietorship, Partnership, Limited Liability Partnerships and Companies.

We are happy to assess your eligibility and assist with the loan application process.

#### d) Loan Insurance Scheme (“LIS”)

The “LIS was introduced to help SMEs to secure short-term trade financing loans by having commercial insurers co-share loan default with the participating financial institutions<sup>15</sup>. A portion of the insurance premium is supported by the government.

As announced at Supplementary Budget 2020, support for the LIS insurance premium will be increased to 80% (from 50%) until 31 March 2021.

Enterprises can apply for the LIS to secure short-term trade financing for the purpose of:

- Inventory/ stock financing facility;
- Structured pre-delivery working capital;
- Factoring/ bill or invoice or accounts receivable discounting with recourse;
- Overseas Working Capital Loan;
- Banker’s Guarantee.

Companies interested to benefit from the LIS can apply with the participating financial institutions, provided they fulfil the following requirements:

- be a business entity registered and physically present in Singapore<sup>16</sup>;
- at least 30% owned directly or indirectly by Singapore Citizen and/ or Singapore PRs, determined by the ultimate individual ownership; and
- maximum Borrower Group<sup>17</sup> revenue cap of SGD 100 million for all enterprise or a maximum of 200 employees.

**Procedure:** The LIS is administered directly by the participating financial institutions. The amount of the loan, its approval and its interest rate remains subject to the discretion of the commercial insurers and the participating financial institutions.

We are happy to assess your eligibility and assist with the application process.

### 3. Other Sector Specific Measures

In addition to all the measures detailed above, the government initially implemented measures specific to the aviation sector, the cargo industry, the cruise and ferry ships, and the hawker centres and markets and now announced additional measures for the tourism sector, the land transport sector, and the arts and culture sector. Please do approach us for further information on these sector specific measures.

## C. HR Compliance / Employment Law

### I. Focus on Training and Skills Upgrade

Training and skills upgrading of employees is one of the key strategies recommended by the Tripartite Advisory to implement during this period. Under certain conditions, employers may also receive absentee payroll subsidies for employees undergoing training. Employers can tap on training support scheme under the SkillsFuture movement, redeployment programmes under the Adapt & Grow initiative and other government grants. This will not only help in retaining employees but would also increase business productivity by preparing for business demands in the future when operations resume as usual.

### II. Implement a Flexible Work Schedule

Employers are encouraged to implement flexible work arrangements which allow them to be exempted from certain requirements under the Employment Act in relation to mandatory overtime pay for work done during rest days and public holidays.

<sup>15</sup> Bibby Financial Services (Singapore) Pte. Ltd., CIMB Bank Berhad, DBS Bank Ltd., Hong Kong and Shanghai Banking Corporation, Hong Leong Finance Ltd., Maybank Singapore Ltd., Oversea-Chinese Banking Corporation Ltd. (OCBC Bank), RHB Bank Berhad, Standard Chartered Bank, the Bank of East Asia Ltd., United Overseas Bank Ltd. (UOB).

<sup>16</sup> ACRA registered Sole Proprietorship, Partnership, Limited Liability Partnerships and Companies.

<sup>17</sup> Borrower Group consists of the following: (i) borrower and (ii) corporate shareholders that hold more than 50% of the total shareholding of the company and any subsequent corporate parents and subsidiaries.

For employees who are entitled to overtime payment under the Employment Act (“Part IV employees”), employers can consider implementing a Flexible Work Schedule (“FWS”) or reduce working hours in order to help the company optimise the use of manpower in the company while keeping unused working hours to offset any subsequent overtime hours in the future.

Under a FWS, employers can reduce weekly working hours without adjusting wages, by creating a “timebank” of unused working hours. This means, that the employee continues to receive his/her basic monthly wage based on 44 hours of work and applicable allowances. However, the hours that are not worked are accumulated either as hours “not worked” or as hours “already paid”. Then these accumulated hours “not worked” or hours “already paid” can be drawn down in the future when the employee clocks overtime hours.

While the employee draws down the accumulated work hours, the maximum hours of work under the Employment Act must still be complied with. Further, the FWS allows for employers to seek ex-emption from statutory provisions for work done on rest days, public holidays, and overtime payment rates.

Procedure: Employers that would like to adopt a FWS need to seek the support of the unions and employees and thereafter have to make an application to the Commissioner for Labour in order to be exempted from the above mentioned statutory provisions. MOM has made certain exceptions to expedite the FWS application procedure by introducing a simplified application procedure for short-term approvals of up to 4 months. We are happy to assist you on the application procedure.

### **III. Implement Flexible Work Arrangements**

For employees who are not eligible for overtime, alternative Flexible Work Arrangements (“FWAs”) such as part-time employment or job-sharing may be more practical ways of implementing work flexibility. Implementing those FWAs requires consent of the respective employees.

There are also some general grants available for employers who adopt FWAs, however these are not tailored to the current situation and are rather designed as long term incentives.

### **IV. Defer salary increases, bonuses or Annual Wage Supplements (“AWS”)**

Coincidentally, the COVID-19 crisis is appearing at a time where most businesses are wrapping up their financial years, along with decisions on salaries and bonuses.

In cases of companies which are severely impacted by the COVID-19 crisis, employers may consider a temporary reduction or freeze of salary increments, bonuses or AWS in order to reduce operational costs while preserving basic monthly income for its employees.

In Singapore, while it may not be common for employment agreements to provide for mandatory contractual payment of bonuses and increments which are usually discretionary and key performance indicators based, careful consideration of the individual contractual arrangements would still be required. We are happy to assist.

### **V. Temporary Layoff / Shorten Work Weeks / Reduction in Salary**

In order to respond to a temporary decline in business activities, employers may wish to consider temporary layoffs or reducing working hours and pay of its employees. A temporary layoff is a period when an employer ceases to provide work and compensation to an employee temporarily, but both parties nevertheless treat the employment relationship as ongoing, with the understanding that the work/compensation would resume in the near future.

Please note that such measures would require the employee’s consent, and are also subject to various restrictions including the following:

#### **1. Legal Requirements for Temporary Layoffs**

Any layoff period implemented must not last for more than one month in any one instance. Employers should review the layoff again after the lapse of this one month against its business needs. Employees should not be asked to take more than 50% of their earned annual leave, and employers should pay the affected employees no less than 50% of their wage during the layoff period.

## 2. Legal Restrictions for Shortened Work Weeks

Further to the above, an employer may implement shorter work weeks as long as the work week is not reduced by more than 3 days in a week. A reduction of 3 days should only be implemented if the company's performance is severely affected. Any reduction in work week must not last for more than 3 months. Employers should review such reduction in work week after the lapse of the 3 month period against its business needs. Employees should not be asked to take more than 50% of their earned annual leave, and employers should pay the affected employees no less than 50% of their wage on the day(s) when the employees are not working.

## 3. Legal Restrictions for Reduction of Salary

Please note that from 12 March 2020 onwards, employers that are currently employing at least 10 employees and are registered in Singapore must notify MOM if they want to implement any cost-saving measures that affect or reduce the salaries of their employees (such as temporary layoffs or shortening work hours). This does not include any adjustments to discretionary salary payments (e.g. salary increments and bonuses). The notification must be done within 1 week after implementing the cost-saving measures.

For employers that are seeking to adjust the salaries of foreign employees, after notifying the MOM, they would have to seek approval from the Controller of Work Passes.

Employers that implement cost-saving measures during the Circuit Breaker Period between 7 April and 4 May 2020 (inclusive) must notify MOM if the cost-saving measures result in more than 25% reduction in the salaries of their employees and the employer has at least 10 employees.

## VI. Direct Wage Reductions / No Pay Leave

If your business is suffering from extremely poor or uncertain business conditions that are likely to be long term, employers can consider making direct adjustments to wages to further reduce manpower costs, with management leading by example. As these measures would result in wage cuts over an extended period of time, severely impacting the livelihood of employees, employers should engage and seek the consent of unions and employees before implementing these measures.

Companies with a flexible wage system in place may consider adjusting wage components such as the AWS, monthly variable component or other allowances.

Employers are advised to set clear guidelines to restore basic wage cuts through future wage increases or adjustments when business recovers. As far as possible, employers should endeavour to pay their employees the AWS. Further, any reduction in wages should be applied to local and foreign employees fairly.

As a last resort, employers can consider putting employees on no-pay leave in order to reduce redundancies and save jobs.

**Please note:** Measures that affect salaries require notification of MOM / approval from the Controller of Work Passes as indicated under 3.5.3 above.

## VII. Contingent Workforce

Employers can consider making use of this opportunity to look to the long-term and begin building a pool of a contingent workforce consisting of self-employed consultants, contractors, agency workers and zero-hours staff. From our experience, such arrangements can be easily flexed upwards or downwards, and offer business significant flexibility in terms of staffing needs and requirements over a period of time.

## VIII. Last resort: Responsible Retrenchment

If retrenchment is necessary despite all of the above measures and wage adjustments, all employers are reminded to conduct retrenchment exercises in a responsible manner and comply with the prevailing guidelines set out in the Tripartite Guidelines. Please do consult with us before considering this option.

In the event any redundancy is planned, it is mandatory to submit a retrenchment notification to MOM where an employer has a business registered in Singapore, employs at least 10 employees, and retrenches 5 or more employees within a period of 6 months. Retrenchment includes the termination of employees due to redundancy or reorganisation of the employer's profession, business, trade or work. This includes situations where companies undergo liquidation, receivership or judicial management.

## **IX. Frequently Asked Questions on Implementation of Cost-Saving Measures**

### **1. Can an employer force an employee to adopt any of the cost-saving measures proposed by the employer?**

In general, an employer and an employee are free to agree on cost-saving measures proposed by an employer. Employers are not allowed to unilaterally implement cost-saving measures without a clear contractual right to do so. An employer must also ensure that the employee consents to the measures and voluntarily adopts them before implementation. Otherwise the employer may potentially face claims for breach of contract, constructive dismissal and unlawful deduction from wages.

### **2. How can an employer carry out the implementation of the cost-saving measures with-out breaching the employment contracts with the employees?**

An employer may set out an employee's amended employment terms pursuant to the implementation of cost-saving measures in a supplemental offer letter to the employee. The supplemental offer letter should expressly set out that it supplements and/or varies the current employment contract with the employee. In cases where the cost-saving measures affect many employees across the business, the employer may opt instead to issue a standard supplemental letter to the affected employees. Given the current unprecedented circumstances, we recommend employers to seek legal advice on what a supplemental offer letter should contain in order to ensure that the employer's interests are protected in the best possible way.

### **3. How can employers encourage employees to adopt any of the cost-saving measures?**

To encourage employees to agree to the proposed measures, an employer may consider communicating to the employees (for example, by issuing a public announcement) that the proposed measures are company-wide schemes to protect jobs and reduce the likelihood of having to re-trench employees, and assuring employees that the schemes are offered to all or most employees with no intention to discriminate against any group(s) of employees. Senior management should lead by example, including by accepting cost-saving measures earlier and/or bigger pay cuts. An

employer may also approach this issue by providing assurances that the original employment contract terms will apply when business conditions improve.

That said, any impression that employees were forced or under any pressure or duress to agree to the proposed measures should be avoided at all costs.

### **4. Do I need to seek legal advice?**

Complex legal and operational issues arising from the COVID-19 emergency are only just emerging. Employers need to be taking steps now to prepare for disruptions to their workforce and business-as-usual environment. We would recommend that employers take note of the suggestions above, and seek legal advice at an early stage to ensure that any responses adopted do not create additional sources of legal exposure.

## **D. Supply Chain and Commercial Contracts**

In addition to the challenges outlined above, the current situation is putting pressure on a wide range of contractual obligations such as sales and services agreements, supply chain contracts, consultancy agreements and lease agreements, to name a few. Business are advised to carefully review their contractual obligations and to consider their legal options to mitigate financial burden and liability risks. Clear and timely communication is advised to discuss options such as extension of dead-lines, reductions, rebates or holidays for rents of office space, machinery etc.

Further, options to terminate contractual obligations should be reviewed. At a first step it should be considered whether there are explicit provisions in the contract that allow a party to terminate under the current circumstance. Partly, contracts contain a "force majeure" clause. Force majeure clauses are generally intended to enable a contract to be amended or terminated if a party to the contract is unreasonably impeded in adhering to the contract due to external events that are unforeseeable, have no operational connection and cannot be averted even by extreme, reasonably expected care. Force majeure typically includes natural disasters, riots, revolutions, acts of war or embargos. The question whether the disruptions caused by the coronavirus outbreak and the resulting government precautionary measures are covered by the force majeure clause will first and foremost be determined by the wording of the specific clause.

If the contract in question does not provide for a force majeure clause or the scope of the clause does not cover the specific reason for delay or non-performance, the affected party may still be able to rely on general principles of law. While in some legal systems there might be the option to rely on a general legal doctrine of force majeure, in most jurisdictions, another doctrine worth considering would be the concept of “frustration of contract”.

Generally speaking, frustration occurs when, without the default of either party, a contractual obligation has become physically or commercially incapable of being performed because the circumstances in which the performance is called for would render it radically different from that which was undertaken by the contract. The threshold for the contract to be considered to be frustrated is usually very high. Not every event which prevents the performance of a contract will constitute frustration. The event must be fundamentally different from one originally contemplated by the parties.

However, where frustration applies, the contract is automatically discharged, meaning neither party has to comply with future obligations.

Finally, on 7 April 2020 the Singaporean Parliament passed a COVID-19 Temporary Measures Act, which allows businesses and individuals defer certain contractual obligations, such as paying rent, re-paying loans, or completing work, for a period. It will, in that way, provide temporary cash-flow relief for these businesses and individuals who may otherwise have to pay damages or risk having their deposits or assets forfeited..

The COVID-19 Temporary Measures Act also increases the monetary thresholds and time limits for bankruptcy and insolvency.

The measures will cover relevant contractual obligations that are to be performed on or after 1 February 2020 for contracts that were entered into or renewed before 25 March 2020. The measures will be in place six months from the commencement of the Act at first instance and may be then extended to a year.

## **E. Corporate Compliance**

### **I. Extension of Deadline for Holding Annual General Meetings and Filing Annual Returns**

In light of the COVID-19 situation, some companies may have difficulties holding their Annual General Meetings (AGMs) and filing their Annual Returns (ARs).

#### **1. For listed and non-listed companies whose AGMs are due during the period 16 April 2020 to 31 July 2020**

The Accounting and Corporate Regulatory Authority of Singapore (“ACRA”) will grant a 60-day extension of time for all listed and non-listed companies whose AGMs are due during the period 16 April 2020 to 31 July 2020. Companies that had previously been granted extension of time to hold their AGMs within this period will also be given a further 60 days of extension from the last date of extension. The AR filing due dates for the period 1 May 2020 to 31 August 2020 for all listed and non-listed companies will also be extended for 60 days. There is no need for these companies to apply for the extension of time with ACRA.

#### **2. For listed and non-listed companies whose AGMs are due during the period 1 to 15 April 2020**

ACRA will also not impose any penalties on listed and non-listed companies whose AGMs are due during the period 1 April to 15 April 2020 if they hold the AGM within 60 days of the due date. Their AR filing due dates will also be extended for 60 days. There is no need for these companies to apply for the extension of time.

### **II. Temporary Measures for Conduct of Meetings**

As companies continue with their operations, they must also put in place measures to ensure compliance with the Ministry of Health’s (“MOH”) Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020 (“Regulations”), such as ensuring safe distancing. Pursuant to the Regulations, gatherings for non-prohibited events must not exceed more than 10 people and have to be held in accordance with the prevailing Regulations.



In Singapore, only certain provisions in written law and certain legal instruments (such as a company's constitution) provide for personal attendance at meetings. For those businesses who are affected and are now facing uncertainty on how to proceed, Singapore Parliament will introduce new legislation at the next sitting concerning the holding of compulsory meetings.

Subject to Parliament's approval, the new provisions will:

- a. Allow alternative arrangements to be prescribed where:
  - i. Personal attendance at a meeting or class of meetings is provided for in any written law or legal instrument; and
  - ii. It is inexpedient or impracticable for the meeting or class of meetings to be convened, held or conducted in the manner provided for in the written law or legal instrument, in view of the prevailing Regulations; and
- b. Provide that meetings held or deferred, on or after **27 March 2020**, in accordance with such prescribed alternative arrangements will be deemed to satisfy the relevant requirements under written law or legal instrument, despite anything to the contrary in any law or legal instrument.

**\*Examples of meetings where personal attendance is provided for in written law or legal instrument:**

- a. Meetings (e.g. annual general meetings and extraordinary general meetings) held under the Companies Act and each company's constitution;
- b. Meetings held under trust deeds, in particular, listed business trusts and listed real estate investment trusts;
- c. Meetings held under the Variable Capital Companies Act and the variable capital company's constitutions;
- d. Meetings held by management corporation strata title ("MCST") under the Building Maintenance and Strata Management Act;
- e. Creditors' meetings;
- f. Meetings in relation to the winding up or liquidation of entities;
- g. Meetings held under the Societies Act and the society's rules;
- h. Meetings held under the Co-operative Societies Act and the co-operative society's by-laws;
- i. Meetings held under the Town Councils Act and the Town Council's standing orders; and

j. Meetings held under the Trade Unions Act and the trade union's rules.

If the above outlined changes of legislation are approved, they will be brought into force as soon as possible.

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# V. Thailand

## A. Overview

The Thai government has implemented a number of measures to monitor and control the disease, including banning foreign travellers from entering the country by air, land and sea (with few exemptions applying) and closing of shopping centres, restaurants and bars. Further, airlines have suspended flights (Thai Airways temporarily suspended all international flights and shut down its overseas offices; Air Asia stopped its domestic services from 1 April to 30 April 2020). A national curfew is also in place from 10pm until 4am, with very little exception such as for emergency visits to hospitals. A broader curfew is apparently being considered, but has not been implemented yet.

As the situation may change from day to day, we recommend to follow the latest updates from the Thai government and other bodies, such as foreign embassies and chambers of commerce.

## I. Immigration Restrictions

On 19 March 2020, the Civil Aviation Authority of Thailand issued a notification with guidelines for air operators performing flights into Thailand:

With effect from 22 March 2020, passengers traveling into the Kingdom of Thailand must be subject to isolation, quarantine, under observation, or any other measures for the prevention and control of communicable diseases as prescribed by the communicable disease control officials at the international communicable disease control checkpoint.

Air operators providing services to passengers traveling to Thailand are required to perform the following screening of passengers at the time of check-in:

- Check passengers' health certificate and blood tests certifying that the passengers have no evidence of being infected by the Coronavirus Disease (COVID-19). – The health certificate must be issued no more than 72 hours prior to the date of travel; and
- Check passengers' insurance policy that shows minimum medical coverage in Thailand of Coronavirus Disease (COVID-19), in the amount not less than USD 100,000.

For passengers with Thai nationality, the air operators are required to perform the screening as follows:

- Check passengers' health certificate confirming that the passengers are fit to fly; and

- Check passengers' letter issued by the Royal Thai Embassy, Thai Consular Office or the Ministry of Foreign Affairs certifying that the passengers are Thai nationals returning to Thailand.

If passengers are unable to present the required documentation, the air operator shall not issue a boarding pass and the boarding shall be denied.

In addition, passengers are required to fill in Form T-8 issued under the *Thai Communicable Disease Act* and present the same to Disease Control Officers at the quarantine office in their destination airport in Thailand.

Thailand's immigration rules are usually quite strict: the fine for overstaying is 500 baht per day; when overstaying for a significant amount of time (90 or more days), foreigners can be expelled and banned from Thailand. To ease the immigration situation of aliens, the Immigration Bureau published a notification on 7 April 2020, according to which all types of visas will be automatically extended to 30 April 2020 (without the need to apply for an extension).

## II. Closing of Public Venues and Curfews

Bangkok and its five adjacent provinces Samut Prakan, Samut Sakhon, Nakhon Pathom, Nonthaburi and Pathumthani announced temporary closure of the following venues (from 22 March to 12 April 2020):

- Spa, health and massage parlours;
- Weight loss clinics;
- Skating and roller blade venues;
- Beauty salons;
- Bowling alleys;
- Theme parks;
- Golf courses & driving ranges;
- Public swimming pools;
- Tattoo parlours;
- Nurseries;
- Cock-fight rings;
- Conference facilities;
- Exhibition halls;
- Amulet trading grounds;
- Markets (excluding markets that offer fresh food, vegetables and food stalls);
- Shopping malls (excluding the supermarket section); and
- Public and private educational institutions.

Further, Nakhon Ratchasima (Korat) announced a temporary shutdown of shopping malls and certain venues from 22 March to 12 April 2020, Chiang Mai closed department stores, marketplaces and public service spots from 23 March to 12 April 2020 and Chonburi closed public swimming pools, water parks, playgrounds, amusement parks and certain venues from 23 March to 12 April 2020.

On 1 April 2020, the Bangkok Metropolitan Administration has ordered all shops and street vendors to close from midnight to 5 am starting from 1 April 2020. Other provinces announced measure for stricter movement control (for example curfews at night, travel restrictions between provinces, social distance during shop opening hours and mandatory wear of face masks).

To reduce the movement of people, the Thai government issued a curfew regulation banning all people nationwide from leaving their homes from 10 pm to 4 am (starting from 3 April 2020 until further notice). In case of non-compliance, offenders may be punished with imprisonment up to two (2) years or fine up to THB 40,000 or both. If the measure does not prove to be effective, stricter measures may be implemented.

Social gatherings, social activities or assemblies which are risky for disease spreading, or other actions which take advantages from the public, or actions with the purpose of disease spreading shall be prohibited. Exemptions shall apply to family activities within their own premises or government authorities which have proper social distance measures in place. In case of non-compliance, offenders may be punished with imprisonment up to two (2) years or fine up to THB 40,000 or both;

In line with the current curfew announcement, the Bangkok Sky train (known as the BTS) and the Bangkok Subway (known as the MRT) currently stops operations at 9.30 pm.

On 8 and 9 April 2020, some provinces announced banning the sale of alcohol. Bangkok for example prohibits such sales from 10 to 20 April 2020.

### III. Declaration of an Emergency Situation

On 25 March 2020, Prime Minister General Prayut Chan-ocha issued a statement on the state of emergency to combat the coronavirus disease. Declaring a State of Emergency for the Kingdom of Thailand, through the *Emergency Decree on Public Administration in Emergency Situations*, from 26 March 2020 onwards.

Under this declaration, the following announcements have been made:

- Prohibition from entering and closing down of areas and places at risk of COVID-19 infection;
- Closing down of borders with exceptions for transport operators, diplomatic staff, members of international organizations and government representatives, non-Thai nationals who have work permits in Thailand, and Thai nationals;
- Prohibition of hoarding of essential products;
- Prohibition of public gathering;
- Obligation to refrain from travelling across provinces, people should stay home or work from home;
- Essential places that shall remain open are hospitals, pharmacies, restaurants for take away, convenience stores, supermarket and markets in some particular zones, factories, ATMs, banks, gas stations, transportation services, government authorities. Opened places shall have the required preventive measures implemented;
- Three particular groups of people should stay at home to protect themselves from a possible virus infection. These vulnerable groups include people who are older than 70 years, children aged below five years, and people with some diseases, such as diabetes, hypertension, stroke and cardiopathy, respiratory problems, and allergies.

#### Public Transportation

Railways to the South, North, and North East stopped their services starting from 1 April 2020 until further notice.

## B. Government Support Measures

### I. Measures of the Board of Investment

In accordance with the announcement by the Ministry of Finance to postpone corporate income tax submission for the 2019 accounting year (Por.Ngor.Dor.50) to 31 August 2020, the Board of Investment (BOI) has extended the application deadline for corporate income tax exemption privileges to 31 July 2020, or not less than 30 days before the corporate income tax filing date.

## II. Tax Relief Measures

In March 2020, the Thai Government has announced a number of relief measures for Corporate Income Tax, Personal Income Tax, Value Added Tax and Withholding Tax filings for residents of Thailand (including foreign nationals residing in Thailand):

### March 2020: Summary and Highlights of Thai Laws and Tax Measures – COVID-19

Date of Announcement	Thai Government/ Ministry/ Department	Brief Description of Announcement	Effective Date/Period
21 March 2020	The Security Social Office – Labour Department	<p><b>Employment Relief Measure</b></p> <p>Rate for compulsory social security contributions by employers and insured persons <b>will decrease from 5% to 4%</b>.</p> <p>The Government's contribution remains the same at 2.75%.</p>	From <b>March to August 2020</b>
24 March 2020	The Revenue Department	<p><b>Corporate Income Tax Measure and Filing</b></p> <ul style="list-style-type: none"> <li>■ CIT returns (PND.50) and filing by non-listed entities for year ended 31 December 2019</li> <li>■ Half year CIT returns (PND.51) and filing by non-listed entities for year ended 31 December 2020</li> </ul>	<p>Extension for CIT returns (PND.50) filing <b>from 29 May to 31 August 2020</b></p> <p>Extension for half year CIT returns (PND.51) filing <b>from 31 August to 30 September 2020</b></p>

Date of Announcement	Thai Government/ Ministry/ Department	Brief Description of Announcement	Effective Date/Period
24 March 2020	The Revenue Department	<p><b>Personal Income Tax Measure and filing</b></p> <ul style="list-style-type: none"> <li>■ PIT returns (PND.90/PND.91) for the year 2019</li> </ul>	<p>Previously, the PND.90/91 filing was extended from 31 March (or 8 April for e-filings) to 30 June 2020.</p> <p>PIT returns (PND.90/91) filing is now extended <b>from 30 June to 31 August 2020</b>, i.e. two months more months as initially granted under the measurements of economic stimulus.</p>
		<p><b>Value Added Tax (VAT) and Special Business Tax (SBT) Measures and Filings</b></p> <ul style="list-style-type: none"> <li>■ VAT and SBT returns and filings by corporate entities that have had been seriously affected or closed their business.</li> </ul>	<p>Extensions for the filing of VAT and SBT returns shall be discussed with the tax officer of each TRD's area and province.</p>
27 March 2020	The Ministry of Finance	<p><b>Tax Relief Measures</b></p> <p>Withholding tax imposed on payments for the following services <b>will be reduced from 3% to 1.5%</b></p> <ul style="list-style-type: none"> <li>■ Section 40 (2): Commission and brokerage fees</li> <li>■ Section 40 (3): Goodwill, copyrights, patents, trademarks, know-how or similar rights</li> <li>■ Section 40 (6) (7): liberal professional fees, contracting business</li> <li>■ Section 40 (8): hire of works, awards, discounts or other benefits given for sale promotion purposes (excluding the hotel and restaurant businesses services and life insurance premiums).</li> </ul>	<p>For payments made from <b>1 April to 30 September 2020</b>.</p>

### III. Social Security Measures

The Social Security Office (SSO) issued the following measures to provide relief from COVID-19:

- The SSO reduces contribution rate for employer to be 4% / month, and for employee to be 1% / month. Insured persons who are already unemployed but tend to be secured under the Social Security Act are entitled for contribution reduction to be THB 86/ month from March 2020 to May 2020;
- The SSO also extends the date of contribution payments for the period between March 2020 and May 2020, from the usual contribution date on every 15th day of the following month to:
  - 15 July 2020 for the March salary period
  - 15 August 2020 for the April salary period
  - 15 September 2020 for the May salary period
- Increased unemployment benefits for insured persons who either isolated themselves for 14 days and cannot work because of COVID-19 or are affected by an order of the authority to close their place of work. The insured person is eligible for 62% of daily wage and such support shall not exceed 90 days;
- Insured person who resign are entitled to 45% of their total wage for a period not exceeding 90 days, and insured persons who are unemployed are entitled to 70% of their last total wage for a period not exceeding 200 days.

Employers, employees, or any other insured person can apply for the benefits online.

### IV. Moratorium for Permanent Obligations

Banks and financial institutes have issued measures to support debtors as required and supported by the Bank of Thailand, such as:

- Credit card loans: reducing minimum payment from 10% to 5%, reducing interest for cash card from 5% to 3%, seizing both capital and interest payment for up to 6 months;
- Personal loans: seizing both capital and interest payment for 3-6 months;
- House loans: seizing capital payment up to 12 months, seizing both capital and interest payment up to 6 months;
- Business loans: seizing capital payment for up to 3 months, seizing both capital and interest payment for up to 6 months; and
- Car loans: seizing instalments for up to 6 months.

### V. Financial Grants

- The Thai Government has ordered the various Ministries to support people suffering economic impacts. Measures include:
  - Ministry of Finance issued a system to support employers with up to THB 5,000 per month for 3 months;
  - PEA returned electricity meter deposit to registered people;
  - The Cabinet approved THB 1.6 billion to compensate Savings Bank and Bank for Agriculture and Agricultural Cooperatives for granting low interest loans at an interest of 0.1% per month;
  - Office of the National Broadcasting and Telecommunications Commission will offer registration for a free internet package of 10 GB per mobile phone user from 10-30 April;
  - Provincial Waterworks Authority will open for a return of security payment registration on 15 April;
  - Energy Regulatory Commission approved to reduce electricity fee to 3% for 3 months (April – June 2020).

### VI. State Subsidies and Guarantee Programs

The *National Health Insurance Act* is amended to include the Covid-19 disease under the SSO health fund for people covered by the SSO system. Expenses in relation to the Covid-19 detection program and cure can be claimed with the SSO.

The Ministry of Public Health issued an official letter to every private hospital to not charge any fees to Covid-19 patients. The hospital shall claim the expense with the Ministry of Public Health for persons not covered under the SSO system.

### VII. Stabilization Funds

The Bank of Thailand (BOT) has alleviated the situation through a government bond purchase program amounting to more than 100 billion baht during 13-20 March 2020, and the reduction and cancellation of BOT bond issuance, while the Monetary Policy Committee has reduced the policy rate to the record-low level of 0.75% / year on 20 March 2020. BOT stands ready to make additional purchases of government bonds to lower the volatility of the government bond yield, and to ensure the normal functioning of the government bond market.



The Ministry of Finance, the Securities and Exchange Commission, and the Bank of Thailand have been closely monitoring the situation in the financial markets, and have deemed necessary to take the following measures to stabilize the financial markets and stop the liquidity problem from spreading further:

- Bond mutual funds: BOT has set up a special facility to provide liquidity for mutual funds through commercial banks. Commercial banks which purchase investment units of high-quality money market funds or daily fixed income funds that have been impacted by the decreased market liquidity, will be able to use the underlying unit trust as collateral for liquidity support from this special facility. The facility will remain open until the market condition returns to normal. BOT's preliminary estimate of eligible bond mutual funds is approximately one trillion baht;
- Corporate bonds: The Thai Bankers' Association, the Government Savings Bank, Thai insurance providers, and the Government Pension Fund have together set up a 70-100 billion baht Corporate Bond Stabilization Fund to invest in high-quality, newly issued bonds by corporates that cannot fully roll over maturing corporate bonds; and
- Government bonds: BOT will continue to provide liquidity to the government bond market through bond purchasing to ensure that the government bond market continues to function normally.

These measures are expected to provide liquidity, support the economy and help building investors' confidence. Relevant public and private institutions will continue to work together, monitor the situation, and provide additional measures to ensure the normal and efficient functioning of the financial market.

As the current stress period is the result of the temporary liquidity shortage while bond mutual funds still hold low-risk, good-quality assets, the public is asked not to rush to redeem during this period of market abnormality.

## C. HR Compliance / Employment Law

### I. Pay Cuts

When it is necessary for an employer for whatever cause, other than *force majeure*, which affects their business and causes the employer incapable to operate his or her business as

normal so as to temporarily suspend the business in whole or in part, the employer shall pay wages to an employee amounting to not less than 75% for working days, received by the employee before the suspension of business for the entire period which the employer does not require the employee to work (sec. 75 *Thai Labour Protection Act*).

As other unilateral measures by the employer to cut wages are not provided for in the applicable labour laws, rules and regulations – and as the Thai labour authorities currently do not classify COVID-19 as a *force majeure* event, which would allow employers to stop operating their business without continuing to pay wages – the employer would have to obtain the consent of the employee for any further reductions in salary payments (e.g. under a mutual agreement to amend the existing employment contract).

### II. Reduction of Working Hours

Under the applicable labour laws, rules and regulations, the employer is not permitted to request employees to work shorter hours if such measure would affect the employees' compensation. We are currently not aware of any exceptions due to COVID-19. Therefore, any request by employers to work shorter hours requires the consent of the employee.

### III. Mandatory Leave

Under the current legal framework, employers cannot require employees to take paid or unpaid leave. An exception to this rule could apply if COVID-19 would qualify as a *force majeure* event (see above).

### IV. Work from Home

Based on the current legal framework, employees cannot be required to work from home. While no particular law, rule or regulation has been announced yet on this matter, pursuant to the Emergency Decree dated 26 March 2020, the Thai Government encourages people to stay at (and work from) home. Consequently, employers should consider implementing work-from-home arrangements for their employees.

### V. Public Announcement to Close Businesses

It is currently unclear whether an employer would have to continue paying an employee's salary in case the Thai

government orders business to stop operating. Should such an order qualify as *force majeure*, it may be possible to suspend wages depending on a case by case basis.

## VI. Redundancy

As the Thai government has not issued any special rules, the termination of employment due to COVID-19 shall be subject to the general provisions of the *Thai Labour Protection Act*.

In general, the employer may terminate the employment contract by giving advance notice in writing to the employee at

or before any due date of wage payment, in order to take effect on the following due date of wage payment, with no requirement for advance notice of more than three (3) months. Upon such notice, the employer may pay wages in an amount to be paid up to the due time of termination of the contract of employment as specified in the notice and may dismiss the employee immediately (sec. 17).

As per sec. 118 *Thai Labour Protection Act*, the employer shall pay severance pay to the employee who is terminated as follows:

Period which the employee has worked	Minimum severance pay entitlement
From 120 days to less than 1 year	30 days of wages
From 1 years to less than 3 years	90 days of wages
From 3 years to less than 6 years	180 days of wages
From 6 years to less than 10 years	240 days of wages
From 10 years to less than 20 years	300 days of wages
From 20 years and over	400 days of wages

Further, when employment ends, an employee has to be paid out all unused annual leave as part of the final pay (as well as any other payments due under the employment agreement).

All payment shall be done within 3 days after the termination date. Otherwise, the employee is entitled to an additional 15% interest per year.

Alternatively, the parties can also conclude a termination agreement, according to which the employer and the employee desire to terminate their contractual relationship and they amicably settle and dispose of any claims of whatsoever kind or nature which the employee may have or claim to have against the employer arising from or out of his employment or the termination of his employment relationship with the employer.

## VII. Occupational Health and Safety Measures

The Thai health and labour authorities have, among others, ordered that employers regularly clean offices, provide hand disinfectants, inform employees about general hygiene measures, introduce clear guidelines for combating COVID-19 in the workplace and have the body temperature of employees measured before the start of work for a larger workforce. If employees become ill (but have not yet tested positive for COVID-19), the employer must consider partially or completely closing the company.

In addition, employers must notify the authorities immediately in case an employee is confirmed to be infected with COVID-19 or is reasonably suspected of being infected (sec. 31 *Thai*

*Communicable Disease Act*). In case of non-compliance, the employer may be liable to a fine not exceeding THB 20,000.

## VIII. Self-Quarantine

On 25 March 2020, the Department of Disease Control announced the following restrictions:

The Ministry of Public Health, Thailand recommended Thai people who arrive from affected areas and develop symptoms including fever, coughing, sneezing, panting or runny nose within 14 days of return, to seek medical care at the hospital immediately and inform the health care provider regarding the history of recent travel to China.

- People arriving to Thailand from a Disease Infected Zone (DIZ) (currently China (including the special administrative regions Macau and Hong Kong), Iran, Italy and South Korea) were required to self-quarantine for 14 days from the date their arrival; and
- People arriving from other local transmission areas (currently Denmark, France, Germany, Great Britain, specific cities in Japan, Netherlands, Norway, Spain, Sweden, Switzerland and United States) were required to monitor frequently whether they show possible COVID-19 symptoms during the first 14 days after their arrival (but were not required to self-quarantine).

Other than the above announcement, there are currently no laws or regulations in place that would require persons to self-isolate.

Under current labour laws and regulations, employers are prohibited from dismissing an employee who is officially quarantined and can no longer get to work. However, it seems justifiable that the employer pays the employee no wages during his absence (no-work-no-pay principle).

In principle, an employee is entitled to a maximum of 30 paid sick days a year. If the illness lasts more than 3 days, the employer can request a medical certificate. If an employee is sick for more than 30 days a year, the employment relationship continues without continued payment of wages.

## D. Supply Chain and Commercial Contracts

### I. Force Majeure

#### *Contractual Clause*

Commercial contracts usually contain clauses on force majeure and/or an itemized list of events that the parties have agreed will constitute force majeure.

Alternatively, the debtor may try to invoke provisions of the *Thai Civil and Commercial Code* on force majeure.

#### *Legal Definition of Force Majeure*

Force Majeure is defined in Section 8 of the *Thai Civil and Commercial Code* as “any event the happening or pernicious result of which could not be prevented even though a person against whom it happened or threatened to happen were to take such appropriate care as might be expected from him in his situation and in such condition”.

#### *Supreme Court Decisions*

While the law does not further elaborate on when the performance becomes impossible, the Thai Supreme Court’s interpretation on *force majeure* is indeed similar to the doctrine of frustration, with the difference that the cause for frustration may be temporary in nature and the contract can be honoured thereafter once again. It should be noted, however, that the court will interpret this term and decide on a case-by-case basis.

While we are currently not aware of any precedents, the Thai Supreme Court previously ruled on a similar situation during the “Bird Flu” crisis (Supreme Court No. 5353/2009). The defendant had bought 40,137 chickens from the plaintiff, to be raised in the defendant’s chicken farm and to be sold back to the defendant once the chickens had grown-up. Due to the spread of the bird flu, the government ordered the defendant to kill all 40,137 chickens. The Thai Supreme Court ruled that the defendant shall be freed from his duty to sell back the chickens, due to *force majeure*. Therefore, it was impossible for the defendant to perform the contractual obligations.

### Current Situation

On 25 March, the Prime Minister declared a State of Emergency for the Kingdom of Thailand (please see above). With regard to this declaration – which allows for further announcements on restrictions for access to risk areas, closure of risk areas, closure of entry/access points to the country, restrictions/conditions on certain vulnerable groups (such as the elderly, the sick, and children) from leaving living premises, restrictions on hoarding of consumer items, and ensuring of price controls on items and restrictions on the deliberate dispensing of distorted information – and future developments, it may become impossible to perform a contractual obligation.

This shall, however, be assessed on a case-by-case-basis.

## II. Principle of “Interference With the Basis of the Transaction” Under Thai Law

For an event in which there is an interference with the basis of the transaction, the *Thai Civil and Commercial Code* provides for the following:

- The debtor is relieved from his obligation to perform, if the performance becomes impossible in consequence of a circumstance, for which he is not responsible, occurring after the creation of the obligation (sec. 219); and
- Except in the cases mentioned in the two foregoing sections, if an obligation becomes impossible of performance by a cause not attributable to either party, the debtor has no right to receive the counter performance. If performance becomes impossible by a cause attributable to the creditor, the debtor does not lose his right to the counter performance. He must however, deduct what he saves in consequence of release from the performance, or what he acquires or maliciously omits to acquire by a different application of his faculties. The same rule applies in the performance due from one party becomes impossible, in consequence of a circumstance for which he is not responsible, at the time when the other party is in default to acceptance (sec. 372).

The law does not further elaborate under which circumstances performance becomes impossible. However, the Supreme Court has set precedent of terminology that such event shall be an event where it is permanently impossible to perform the contract at all. Sample events are e.g. a hotel, which has been destroyed by fire, or the government announcing a prevention

of tourists to visit the city where the hotel is located.

Other events, where it is not permanently impossible to comply with the contract are:

- An event that makes complying with a contract more difficult due to extra burdens to the party: meaning it is still possible to comply with the contract but there is an excessive burden to a party which was not foreseen upon entering into the contract e.g. sudden change of government policy, serious civil war or unexpected natural disasters in the location; or
- An event that causes some obstacles to comply with the contract: meaning it is possible to comply with the contract with normal burden as can be expected in doing business e.g. tourist low season, IT problem in booking system, government policy regarding immigration law, exchange currency changes, economic crisis. In these cases, it is considered as a normal business risk or commercial risk which business operators shall foresee before entering into any contract that they might gain or loss from business and thus the termination or amending of the contract is unlawful.

## E. Corporate Compliance

### I. Filing Deadlines for Financial Statements and Lists of Shareholders

Generally, a company must hold an Annual General Meeting (AGM) within four months from the end of the fiscal year. During the AGM, the company’s audited financial statements must be read and must be open to inspection by any member of the company. If default is made in holding an AGM, the company and every director who is knowingly and wilfully a party to the default will be liable to a fine.

In light of COVID-19, the Department of Business Development (DBD) has given companies more flexibility and extended filing deadlines for limited companies as follows:

- AGM: currently no deadline anymore (usually within four months after the end of the fiscal year);
- List of Shareholders: within 14 days from the date of the postponed meeting (usually within 14 days from the date of the normal meeting); and
- Financial Statements: within one month from the date of the postponed meeting (usually within one month from the date of the normal meeting).

These extensions shall apply to cases where meetings were delayed due to COVID-19. They shall, however, not apply if the filing is delayed for other reasons (e.g. the audited financial statements were not completed in time).

Once the postponed meeting took place, limited companies shall submit an explanation letter to the DBD.

For overseas corporations carrying-out activities in Thailand (e.g. via a branch office, representative office or regional offices), the DBD has announced that the deadline for the filing of financial statements shall be extended to 31 August 2020 (usually within five months after the end of the fiscal year). No explanation letter to the DBD shall be required.

## II. Submission of Applications for Tax Exemptions

In addition to their already existing e-services (such as e-investment for applications, e-tax for corporate income tax exemption authorization, and e-land for land ownership approval), the BOI has launched an online document submission service (e-submission) on 30 March 2020. Please visit the following website for further information: <https://doc.boi.go.th/>.

Both the Head Office of the BOI at 555 Vibhavadi-Rangsit Road and the One Start One Stop Investment Centre (OSOS) located on the 18th Floor of the Chamchuri Square Building at Rama IV Road will stay open during normal office hours (although with reduced personnel).

Should investors have any queries, the BOI is now offering online meeting services. Please contact them via email (head@boi.go.th) or telephone (+66 2553 8111 ext.1) to schedule an online meeting.

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# IV. India

## A. Overview

On 11 March India invoked the Disaster Management Act, 2005 (“DMA”) and the Epidemic Act, 1897 (“EA”) giving authority to the Central Government to take necessary measures to prevent the spread or mitigate the consequences of Corona virus.

On 25 March the Government, Ministry of Home Affairs (“MHA”) issued an Order (the “Order”) and Guidelines, announcing one of the most comprehensive Lockdown measures worldwide for more than 1,3 billion Indian people for until 15 April 2020. The Central and State Governments are currently considering whether to extend the country-wide lockdown or to keep only hotspots under lockdown and to start a “staggered exit”.

Under the Order, it is prohibited to continue working in office premises except for those involved in essential services (e.g. water, power generation, sanitation, energy, telecommunications, oil, gas fuel, telecommunications, print media, insurance and banking, health care facilities and pharmacies, fire prevention, prisons, ports, airports, security, defense, shops and e-commerce only for essential goods, transport dealing with essential goods, cold storage and warehousing). Manufacturing is prohibited except for essential goods and the packaging thereof. Further raw material suppliers for essential goods and intermediaries in the supply chain can continue operations. Through several amendments some relaxation were made for the agricultural sector, tea plantations, agricultural machinery and shops for truck repairs on high ways.

The order further enables production units, which require continuous process, to apply for permission from the State Government and continue operations if permission has been granted. All other establishments may work from home only.

Some states have provided further exemptions. For example recently Karnataka permitted the manufacturing of parts and systems for the assembly lines of global aerospace and defence industry such as Boeing and Airbus in order to protect local based manufacturers.

## B. Government Support Measures

The below list is not exhaustive and new measures are announced on a daily basis to ensure the adverse impact on companies is minimised as far as possible.

### I. Corporate Compliance

- Under the Companies Fresh Start Scheme, 2020 no additional fees shall be charged for late filing during a moratorium period from 1 April to 30 September 2020, which will not only reduce the compliance and financial burden at large, but also enable long-standing non-compliant companies/LLPs to make a “fresh start”.
- The requirement of holding meetings of the Board of directors within 120 days, has been extended by a period of 60 days for the next two quarters and can be held through video conferencing or other audio visual means.
- The requirement for holding general meetings for passing ordinary or special resolutions has been relaxed allowing companies to pass resolutions through postal ballot or e-voting without holding a general meeting or if holding the general meeting is considered unavoidable, to conduct it through video conferencing or other audio visual means.
- The requirement for compliance with the Companies (Auditor’s Report) Order, 2020 is postponed to financial year 2020/21 instead of 2019/20.
- Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, shall not be treated as a violation.
- The requirement for filing a declaration for Commencement of Business within 6 months of incorporation can now be extended with 6 months.

### II. Tax Compliance

- Suspension of statutes of limitations and due dates under Income Tax Act, 1961 and various other laws where the time limit is expiring between 20th March 2020 to 29th June 2020.
- Reduced interest rate from 12%/18% to 9% per annum will be charged for delayed payments of advanced tax, self-assessment tax, regular tax, TDS, TCS, equalization levy, STT, CTT made between 20th March 2020 and 30th June 2020. No late fee/penalty shall be charged for delay.
- All Companies can file GST returns due in March, April and May 2020 by the last week of June 2020 and no late fee and penalty will be charged. Companies with aggregate annual



turnover less than INR 5 Crore will also not be charged interest. For other companies interest rate has been reduced from 18% to 9 %.

- Time limit for any compliance under the GST laws where the time limit is expiring between 20 March to 29 June 2020 shall be extended to 30 June 2020.
- Deadline for opting for composition scheme has also been extended until end of June 2020.

### III. Relief Under the Insolvency and Bankruptcy Code, 2016 (“IBC”)

The Government has recognized the financial burden on companies and has raised the threshold of default for initiating insolvency proceedings from 100k INR to 10 million INR (~133k USD) in order to prevent triggering of insolvency proceedings against micro, small and medium enterprises (MSME).

If the current situation continues beyond 30 April 2020, the Government is considering suspending section 7, 9 and 10 of the IBC for a period of 6 months in order to avoid companies at large from being forced into insolvency proceedings in such force majeure cases.

## C. HR Compliance / Employment Law

### I. Legal Issues and Regulations During the Coronavirus Outbreak

#### 1. Termination, Wages

On 20 March, the Ministry of Labour & Employment of India issued an Advisory and on 29 March the MHA an Order under Section 10 (2) DMA to all employers, be it in industrial or shop and commercial establishments, to make payments of wages on due date without any deductions for the duration of the lockdown period. The Advisory further prohibited the termination of employees, particularly casual or contractual workers. The Order on the other hand does not mention termination.

#### 2. Leave

Further according to the Advisory if an employee takes leave, he/she should be deemed to be on duty without any consequential deduction in wages for this period. The Advisory does not differentiate between sick leave, casual leave, or annual leave. The Order on the other side does not include any imperatives related to leave, only that no salary deductions during the duration of the lockdown should be made.

**Note:** While initially it has been argued that the advisories might not be binding because of lack of reference to the legal grounds or to the laws which they are amending, the Government of India has clarified that the advisories are binding and should be treated as directives under the DMA and Article 256 of the Constitution of India. To avoid any doubt of the imperative nature and its intentions, it has moved to issuing orders. There have been no court proceeding challenging the orders or the advisories so far.

**Recommendation:** Keeping in mind the substantial legal uncertainty, we recommend you to make a risk/benefit assessment and follow the advisories and orders as far as possible. Companies which business operations are severally affected by the lockdown should consider reaching an agreement with the workforce how to mitigate the financial impact during and after the lockdown in order to prevent long term consequences.

### II. General Labour Regulations

While current orders under the DMA might be necessary to protect the most vulnerable part of the population in India and avoid humanitarian crisis, safeguarding the Companies are able to provide continuing employment after the end of the lockdown is also essential. Employers are well advised to consider appropriate measures to minimise the negative financial impact as far as possible.

#### 1. Agreement With Employees, Waiver

The recommended approach for both employees and employers is a mutual agreement or a partial waiver. The amendments to the contract should be carefully drafted and the employee should not be pressured to sign the contract.

## 2. Lay-Off

Under the Industrial Disputes Act, 1947 (“IDA”) an employer having more than 50 employees can lay off employees for up to 45 days with payment of 50% of the salary in case of natural calamity. Prior permission of the respective government is required in case the inability to provide employment is due to shortage of coal, power, raw materials, the accumulation of stocks or the break-down of machinery.

In all other cases, in which there is no explicit statutory right for Lay-Off or a contractual right to do so, the operational risk is to be borne by the employer. After the end of the epidemic (“natural calamity”) in India, companies with >50 employees will be required to obtain permission if they wish to lay-off employees.

**Note:** For the duration of the lockdown, the provisions are suspended and overruled by the current orders of the Government.

## 3. Termination/Retrenchment

The labour law in India is partially regulated on state level and partially on central level.

Different regulations are applicable to industrial establishments (IDA) and other establishments (state wise Shop and Establishment Acts). The number of employees (<10, >50, >100) and the function of employees (workmen, managerial etc.) is another criteria for identifying the relevant provisions.

In some cases termination is permissible simply in accordance with the employment contract, in others a notification to the competent authority is required and in case of companies with more than 100 employees prior permission is necessary. Trade union agreements can impose further terms on termination/retrenchment.

**Recommendation:** Review of employment contracts and identify applicable provisions prior to taking decision for termination to minimise litigation risks. Termination/retrenchment are prohibited for the duration of the Order.

## D. Supply Chain and Commercial Contracts

The outbreak has affected the operations of companies severely in different ways. Supply chain disruptions resulting from the restricted movement of goods within India and across borders, closure of factories and establishments, continuing fixed costs liabilities (lease, employees) and substantial decrease in global and local demand are some of the issues faced by companies.

Solutions for mitigation depend on the unique facts of each case and are often related to existing contractual agreements. Some key issues which have become increasingly important are:

- Force majeure clauses in Lease and Supplier agreements;
- Termination clauses;
- Exclusivity clauses and alternative suppliers;
- Amendments and renegotiation of long term, performance related agreements;
- Insurance policies and their terms and conditions;
- Termination/Retrenchment of employees;
- Lay-off;
- Wage and allowances reductions;
- Application for exemption/movement passes for essential services, their suppliers and intermediaries.

### Force Majeure

The question whether relief from payment under a commercial or lease agreement due to a ‘force majeure’ event is one of the questions that has often arisen in connection with the current Coronavirus outbreak.

The Government (Ministry of Finance) vide an Office Memorandum, dated 19.02.2020 has clarified that the disruptions of the supply chains due to the spread of Coronavirus will fall under a force majeure clause. However, a force majeure clause is a contractual clause and cannot be implied in India. It can therefore be only availed if such a relief is explicitly provided under the agreement. A force majeure clause further only free the parties from liability and their contractual obligations for the duration of the force majeure event which prevents them from performing their obligations under the contract. The Coronavirus outbreak is a natural calamity but does not necessarily prevent everyone from fulfilling their obligations. One needs to look at the particular facts of each case. As force majeure is a contractual right, the express wordings of the clause has to be carefully assessed.

A notice of force majeure must be given as soon as it occurs, and it cannot be claimed later.

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Please do not hesitate to contact us for the latest updates on the measures outlined above.

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