



*Legal, Tax & Investment Expertise*



2019  
2020

YEAR IN REVIEW  
&  
LOOKING AHEAD

2019 saw a diverse range of legislation coming into force across the core jurisdictions where DFDL operates. These notably included new (or proposed) public-private partnership laws in Thailand and Vietnam, along with more robust data protection provisions in the Philippines and Thailand, and new legislation governing construction, consumer protection and trusts in Cambodia.

Competition regulations and anti-monopoly rules also saw a significant boost with a new law in Vietnam and the establishment of the Competition Authority in the Lao PDR.

Another notable trend throughout ASEAN was greatly strengthened worker rights and their ability to form unions and pursue collective action remedies along with the implementation of more comprehensive taxation rules to bring certain countries' tax regimes into alignment with international laws, OECD norms and anti-treaty shopping provisions.

As Southeast Asia continues to grow and as new disruptive technologies have started making their presence felt, legislators have been racing to adequately regulate new technologies, financial services and electronic transactions. This has also necessitated putting into place more stringent measures to protect consumers and safeguard their private data. Such momentum is widely expected to persist throughout 2020 as ASEAN countries' regulatory frameworks become increasingly sophisticated, not only to keep pace with new developments but also to reassure foreign investors and encourage more inward investment so crucial to fuelling the growth of this dynamic region.

2020 will see new tax laws come into force in Vietnam and the Lao PDR, fintech legislation in Thailand, new Cambodian tax treaties expected to be ratified, and a new petroleum law due to be enacted in Myanmar to name but a few.

This publication will provide a country-specific overview for your ease of reference.

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# CAMBODIA

## *Legal Developments*

2019 saw the Cambodian government and legislature enact several key laws and implement new regulations that are having a major impact on business in Cambodia. We highlight some of the key changes below:

### **New Trust Law**

The Trust Law was promulgated on 2 January 2019 with the aim of governing all trusts established in Cambodia. The Trust Law introduces four types of trusts: (1) commercial trusts; (2) public trusts; (3) social trusts and (4) personal trusts. The Trust Law introduces a dual licensing requirement whereby operating a trust must be subject to obtaining a license from a competent regulator and a trust must be registered with the Ministry of Economy and Finance in order for it to be valid. Procedures and formalities for registration of a trust are provided in the implementing Sub-Decree 114 on the Registration of Trusts dated 2 August 2019.

### **Real Estate & Construction**

2019 saw the introduction of the Construction Law which was promulgated by Royal Krom No. NS/RKM/1119/019 dated 2 November 2019. This law establishes a regulatory framework to ensure quality, security, safety and greater efficiency across the construction sector. This was followed by Prakas 175 on surveying certificates and Prakas 177 on occupancy certificates. Additionally, prior to the promulgation of this Construction Law, Prakas 118 on the inspection of construction sites and the Fire Safety Code were issued.

### **New E Commerce & Consumer Protection Laws**

The Law on E-Commerce was promulgated on 2 November 2019 and will enter into force after a period of six months from the date of its promulgation. The E-Commerce Law aims to govern domestic and cross-border electronic commerce transactions, provide legal certainty in commercial and civil transactions by electronic systems, and promote public confidence in the use of electronic communications. The E-Commerce Law the validity of electronic communications and signatures, supports the use of electronic communications in contract formation and as evidence, sets requirements on electronic records and signatures, imposes licensing and compliance obligations on intermediaries and electronic commerce service providers, and lays the foundation for electronic filing with governmental institutions.



The new Consumer Protection Law was also promulgated on 2 November 2019 as a matter of urgency and came into effect on the day after promulgation.

The Consumer Protection Law aims to protect consumers and promote competition based on good faith. The law will apply to any persons who conduct business, whether for profit or non-profit, including the sale of goods or other services or real rights over immovable property to consumers in the Kingdom of Cambodia, unless otherwise provided for in separate provisions. The law introduces certain prohibitions in order to protect consumers, e.g. from predatory advertising and pyramid selling schemes. Businesses must also now disclose minimum information to consumers pursuant to standards to be issued by sector-specific competent regulators.

We expect that there will be a number of implementing regulations to be issued by the competent regulators in 2020 and over the coming years to implement the above new laws.

## *Labour Developments*

### **Seniority Payments**

Following the Labour Law Amendment that came into effect on 26 June 2018, the Ministry of Labour and Vocational Training ("MLVT") issued Prakas 443 on seniority payments (replacing indemnity for dismissal) for employees under Unfixed Duration Contracts ("UDCs").

There are two components of seniority payments, being back pay for past seniority prior to 2019 and new seniority payments from 2019 onwards.

Implementation of new seniority payments for all sectors and back pay of seniority payments for the garment, footwear and textile (“GFT”) sectors began in January 2019. However, based on Instruction 042/19, back pay for non-GFT sectors will be delayed until December 2021. The timing of seniority payments is as follows:

- New seniority payments from 2019 onwards: 7.5 days of wages and benefits paid every June and every December; and
- Back pay of seniority payments for past seniority prior to 2019 capped at 6 months to be paid in installments: (1) For GFT sectors from 2019, 30 days of total seniority payments per year: 15 days of seniority payments every June and every December and (2) for non-GFT sectors from December 2021, 6 days of total seniority payments per year: 3 days of seniority payments every June and every December.



## Tax Developments

### New Tax Incentives for Entities Seeking to List on the Cambodian Stock Exchange (CSX)

A Sub-Decree issued on 4 January 2019 introduced a new package of tax incentives for those entities in Cambodia looking to list on the CSX. The 2019 tax incentives provided to listing entities on the CSX are much more comprehensive and concessional than those initially offered in 2011 when the CSX was first established. The Sub-Decree reflects the desire of the Cambodian regulators to increase the existing number of listed entities (currently five) on the CSX.

### Interest Free Loans

Following the introduction of Prakas 986 (transfer pricing regulations), Instruction Letter 151, which permitted interest-free loans between related parties, was withdrawn, and under Instruction 11946, such loans are required to bear interest on an arms-length basis.

On 18 March 2019 the General Department of Taxation (“GDT”) issued Instruction Letter 4909, which states that taxpayers with loans from related parties must have clear and unambiguous supporting documents.

The Instruction Letter also provides that the loan must be properly supported by transfer pricing documentation even if the interest applied is lower than the annual market rate issued by the GDT.

### Withholding Tax on Dividends

On 5 April 2019, the Ministry of Economy and Finance (“MEF”) issued Prakas 372 to introduce new rules on dividend withholding taxes (“WHT”) and expands the definition of what is considered to be a deemed dividend distribution (for taxation purposes), and thus subject to WHT when the recipient of the deemed dividend is a non-resident shareholder.

If a non-resident shareholder transfers shares in a Cambodian entity where all or some of the shares being transferred came about due to an earlier conversion of retained earnings into registered equity in the Cambodian entity, those affected shares would also be treated as a deemed dividend and subject to 14% WHT.

### VAT– Zero-rated Supplies

In an attempt to clarify uncertainty on zero-rated VAT for services performed outside of Cambodia (“**exported services**”) invoiced by Cambodian taxpayers, the GDT issued Notification 9898 on 10 June 2019. The uncertainty facing taxpayers in Cambodia centers upon what constitutes an exported service and what evidence do they need to maintain to avoid being re-assessed on VAT in later tax audits if they decide to zero-rate VAT invoices. A service is considered to be exported if it is provided outside of Cambodia by a Cambodian resident enterprise through the dispatching and/or hiring of employees or technicians outside of the country.

### New Bilateral Tax Treaties Signed

As part of efforts to broaden Cambodia’s Double Taxation Agreement (“**DTA**”) network, 2019 saw the Cambodian Government sign new DTAs with Hong Kong, Malaysia and South Korea respectively. These DTAs will enter into force following the completion of ratification procedures by the relevant jurisdictions.

# THE LAO PDR

## Legal Developments

### New Establishment & License Amendment Processes

2019 saw the implementation of new licensing regimes for the establishment of new businesses and amendments to the licenses of existing companies. With the release of the Controlled and Concessionary Activities List (№ 03/PM, 10 January 2019) and a suite of underlying regulations from the ministries, registration of new companies and those existing companies amending their licenses have undertaken revised application processes and, within some sectors, there has been a resulting decrease in the processing time for applications. In 2020 we expect to see a further refinement of the systems and processes as the departments continue to implement the new regulations.

### Electronic Signatures

In December 2018 the Law on Electronic Signatures (№ 59/NA, 12 December 2018) (“**E-Signature Law**”) was passed and came into effect from 17 May 2019. The E-Signature Law sets out three types of electronic signatures: (i) Simple Electronic Signatures; (ii) Digital Electronic Signatures; and (iii) Digital Seals. Individuals and enterprises wishing to use electronic signatures in their operations are required to obtain an e-signature certificate from the Ministry of Posts and Telecommunications. From which point such electronic signatures will be considered as legally effective as signatures and seals placed on paper documents.

### Competition Authority Established

The Law on Business Competition (№ 60/NA, 14 July 2015) came into effect on 9 December 2015 and in October 2018 an additional regulation was passed to establish the regulatory authority (the “**Competition Authority**”). There were no new regulations in this space in 2019 however, we expect further regulatory developments in 2020. Business operations still need to be mindful of the regulatory framework which currently exists with respect to unfair trade practices, restraint on competition, abuse of market power and mergers.

### Mining

The 2017 Mining Law (which became effective on 5 July 2018) provided a new framework for licensing and obligations in the mining sector. Guidelines released in August 2019 stipulated additional investment requirements in terms of project location and minimum levels of investment.

Additionally, the provision of services in the mining sector is now deemed a controlled business and licensing goes through the Ministry of Planning and Investment. The moratorium on granting new prospecting/exploration licenses is still in effect until December 2020. Draft regulations or implementing decrees still pending promulgation include those concerning:

- Mine Closures;
- Penalties; and
- Tailings Dams.



## Labour Developments

There have been no amendments to the Labor Law but a number of reforms relating to labor in general, namely:

Law on Trade Unions (№ 39/NA, 15 November 2017)

- Decree on Labour Dispute Settlement (№ 76/PM, 28 February 2018)
- Law on Social Security (№ 54/NA, 27 June 2018)
- Decree on the Safety and Health of Labour (№ 22/PM, 5 February 2019)
- Instruction on the Implementation of the Law on Social Security (№ 1206/MLSW, 23 April 2019)
- Decision on determination of list of dangerous work prohibited to young workers No. 4182/MLSW dated 23 November 2016 and published on Lao official Gazette on 10 May 2019.

The Instruction on the Implementation of the Law on Social Security provides benefits listed in the Amended Law, covering:

1. Health care benefits;
2. Labor accident or occupational disease benefits;
3. Maternity allowances;
4. Sickness benefits;
5. Loss of working capacity benefits;
6. Pensions;
7. Death benefits;
8. Family member benefits; and
9. Unemployment benefits.

## Tax Developments

### Amended Law on VAT

The Amended Law on Value Added Tax Law (No. 48/NA, dated 20 June 2018) (“**Amended VAT Law**”) came into effect from 18 December 2018 and applies to individuals, legal entities or organizations that conduct business activities under the VAT system.

The Amended VAT Law clarifies filing dates for VAT for those inside or outside the VAT system, the timing where VAT becomes applicable, the nature of services subject to VAT and related exemptions.

### New Law on Income Tax for 2020

The Law on Income Tax was passed by the National Assembly pending signature by the President of the Lao PDR, its implementation is expected in 2020. The new Law contains a definition of “Resident” which is *‘a person who has domicile to live, earn a living and operate a business in the Lao PDR. Non-resident means ‘persons who have no permanent home to undertake an occupation, earn a living and operate a business in the Lao PDR’*

New profit tax rates under the Law on Income Tax: Standard rate of 20% for enterprises and non-residents, 22% for those involved in tobacco activities, 13% for companies listed on the Lao Securities Exchange for a period of 4 years, 35% for mineral mining concessions, 5% for businesses relating to the development of human resources such as schools, training centers, other educational activities, 7% for businesses relating to the use of high-level and modern technology, use of innovative, environment-friendly technology, and efficient use of natural resources and energy.

### New Tax Rates & Filing Date

New personal income tax rates of 0-25% and new filing date (by the 20<sup>th</sup> of the following month) under the Law on Income Tax. Foreigners working in the Lao PDR, but receiving their salaries abroad will pay income tax in Lao PDR if they reside in Lao PDR for more than 183 days in any tax year, unless otherwise provided in a bilateral tax treaty or an investment agreement between the Government of Lao PDR and the investors.

## Future Legislation & Developments to expect

The December session of the National Assembly considered a new Law on Cinema and a new Law on gender equality along with amendments to the Bankruptcy Law, the Law on Hygiene, Disease Prevention and Health Promotion, the Insurance Law, the Public Securities Law, the Law on Sports and Gymnastics and the Investment Promotion Law. Although the amendments to the Forest Law and the Commercial Banking Law which were passed in the June session of the National Assembly have now been promulgated, final release of the amendments to the Land Law and Tax Laws mentioned above are still pending.

# MYANMAR

## Legal Developments

### Foreign Insurance Providers Now Allowed to Operate in Myanmar

By way of Announcement No. 1/2019, the Ministry of Planning and Finance (“**MOPF**”) now permits foreign companies “to operate the business of insurance, underwriting agency or insurance broking with foreign investment” in Myanmar.

### Central Bank of Myanmar (“CBM”) Permits 35% Foreign Equity investment in Local Private Banks

This highly significant development allows local banks to expand their services and operations in Myanmar bolstering competitiveness across the market.

### Myanmar Enacts Trademark Law with Priority Protection

This Law enacted on 30 January 2019 introduced a “First-to-File” system (for fresh trademark applicants) through which trademark owners that submit their applications first can prevent identical or similar marks being filed for identical/similar goods and services. The Law does however provide an exception to this called the “right of priority” for trademarks already registered at the Office of Registration of Deeds (“**ORD**”). A new online trademark registration portal is also expected to launch in early 2020 to make the process more convenient and streamlined.





### **New Gambling Law Permits Casinos to Operate in Myanmar**

The Myanmar parliament finally enacted the Gambling Law (“GL”) on 7 May 2019. Strict qualifications have been placed barring entry of Myanmar nationals into casinos and bans gambling though the GL fails to specify whether Myanmar citizens would be allowed to operate and invest in “casino” activities or whether this too will only be open to foreign investors. Details on foreign investment ratios, compliance requirements, capital requirements and required approvals/authorizations have not been specified in the GL though these are expected to be clarified in forthcoming Sub-Decrees or rules.

### **New Draft Petroleum Law & Revised Production Sharing Contracts (“PSCs”)**

The Ministry of Electricity and Energy (“MOEE”) released the draft “Exploration Prospecting Development Production of Petroleum Bill” (“Petroleum Bill”) which seeks to comprehensively reform Myanmar’s upstream petroleum sector touching on matters such as the tender process for oil & gas blocks, revised terms for PSCs, labor issues, environmental issues, and occupational health & safety. Pending comments from the public and oil & gas stakeholders, the Petroleum Bill is expected to become law at some juncture in 2020.

### **The Ministry of Electricity and Energy Revises Electricity Tariffs**

On 25 June 2019, the MOEE announced that the electricity tariffs payable by end-users will be revised upwards, in a move expected to accelerate the development of new power projects in Myanmar.

### **YSX Permits Foreigners to Invest in Shares of Listed Companies**

In an effort to increase foreign investment in Myanmar and allow foreigners to directly invest in the companies listed with the Yangon Stock Exchange (“YSX”), the YSX published a framework and schedule on 6 September 2019 permitting foreigners to invest up to 35% in companies listed on the YSX effective from November 2019.

### **New Land & Property Bank**

On 30 August 2019, the President Office issued Directive no. 2/2019 (“Land and Property Bank Notification”) to prepare for the launch an interactive online database for information on state-owned land, buildings, premises, apartments, shops, residential rooms, factories, workshops and warehouses. The Land and Property Bank Notification sets out how the Land and Property Bank will be established, the role of the relevant governmental departments and individuals in retaining information along with the applications and approval procedures to lease land and property held by the Land and Property Bank.

### **Ground-Breaking**

#### **DFDL Advised on the First ORD Registration of Mortgage Involving Foreign Lenders**

DFDL assisted on what is believed to be the first registration of mortgage over leasehold interest of an immovable property in favor of a foreign lender with the ORD. The successful registration of a mortgage is for the USD 650 million Yoma Central mixed-use real estate development in downtown Yangon, financed in part by loans and equity provided by the International Finance Corporation (“IFC”) and the Asian Development Bank (“ADB”).

## Labour Developments

### Second Amending Law on Settlement of Labour Dispute Law on 3 June 2019

This amendment replaces the terms “individual dispute” and “collective dispute” with “dispute for employment right and privileges” and “dispute for benefits” respectively. Under the amendment law, if a dispute is related to employment rights and privileges, either the employer or employee can submit his/her complaint directly to the relevant Department of Labour Relations or to a competent court.

### Occupational Health and Safety Law 15 March 2019 (“OHS Law”)

The OHS Law aims to improve and integrate the existing occupational safety and health standards spread among the varying pieces of legislation.

Workplaces covered include government departments, joint ventures and foreign-owned companies etc., which will have to appoint Occupation Health and Safety Officers (“Officers”) and form Occupational Health and Safety Committees (“OHSCs”) comprising equal numbers of employers and workers. General obligations of employers include; risk assessments on the use of equipment and machinery, medical check-ups for workers and appointing registered doctors and nurses for large workplaces. Non-compliance with the OHS Law will be subject to a term of imprisonment, fines, or both.

## Tax Developments

Myanmar officially changed the financial or tax year of reporting from the 1 April to 31 March period to 1 October to 30 September, effective 1 October 2019. In 2019, taxpayers were required to adopt a six-month transition period from 1 April 2019 to 30 September 2019.

The Tax Administration Law was also enacted making changes to tax laws in accordance with the plan for tax reform. This law modernizes the Myanmar tax system and provides additional guidance on tax administration procedures.

Myanmar also introduced a tax amnesty program for individuals with undisclosed sources of income, and notably reduced the penalty for late or deficient payment of stamp duty from ten times to three times the outstanding tax due starting from November 2019.

The next phase of the tax reform package includes a new Income Tax Law that is set to replace the existing 45 year old Income Tax Law and will introduce more widely accepted international tax concepts. These include an OECD Model aligned permanent establishment (taxable presence) definition, the arm’s length principle for transfer pricing and thin capitalization rules.

### Updated Tax Administration Procedures

The Internal Revenue Department (“IRD”) has been actively updating its rules and regulations in 2019 and began to issue Interpretation Statements and Practice Statements providing more practical guidance to taxpayers on how a transaction will be interpreted by the IRD.

Additionally, the IRD has started to implement an Integrated Tax Administration System, which is an electronic system that aims to modernize tax administration procedures in Myanmar starting FY 2019-2020.





# THE PHILIPPINES



## Legal Developments

### Data Privacy

No new rules or regulations were issued in 2019 on data privacy. However, the National Privacy Commission (“NPC”), the independent body created to administer and implement the provisions of the Data Privacy Act of 2012 has been actively engaged in the enforcement of data privacy rules and regulations.

Of particular note, the NPC has received over 900 complaints committed by online lending companies against their borrowers.

The NPC has also been actively issuing advisory opinions on data privacy matters. In NPC Advisory Opinion No. 2019-012, for instance, the NPC stated that the Data Privacy Act does not prohibit the hosting of government databases by a foreign entity. The NPC clarified that there is no nationality requirement for service providers. When a personal information controller (“PIC”) subcontracts or outsources the processing of data to a personal information processor (“PI”) such as the engagement of a service provider for hosting services, the PIC is still the party primarily accountable for the protection of personal data. The PIC must use contractual or other reasonable means to ensure that proper safeguards are processed to prevent its use for unauthorized purposes. In the same opinion, the NPC clarified that if the PIC opts to change the provider of its database, no clearance is required from the NPC. However, the PIC must ensure that the previous host complies with its contractual obligations, significantly those relating to access, retention, and deletion of data.

### Personal Property Security Act

The Personal Property Security Act was signed into law on 17 August 2018 and aims to promote economic activity by increasing access to credit, particularly for micro, small, and medium enterprises (“MSMEs”), farmers etc. by establishing a unified and modern legal framework for securing obligations with personal property. The law aims to strengthen the legal framework for secured transactions in the Philippines through the establishment of a centralized notice registry, and enforcement of security interests in personal property.

The law simplifies and harmonizes disparate rules on the securitization of movable collateral, and consequently repealed, amended, or modified portions of the Philippine Civil Code, Chattel Mortgage Law,

Financing Company Act, Property Registration Decree, and the Land Transportation and Traffic Code.

The Personal Property Security Act also laid down new rules for determining the priority of interests and liens in the collateral.

### Philippine Innovation Act & Innovative Startup Act


The Philippine Innovation Act took effect on 6 August 2019 and the Innovative Startup Act became effective on 3 September 2019. Their implementing rules and regulations (“IRRs”) were promulgated in November 2019.

The objective of the law is to generate and scale up action in all levels and areas of education, training, research, and development towards promoting innovation and internationalization activities of MSMEs as drivers of sustainable and inclusive growth. Under the law, a National Innovation Council (“NIC”) shall be established to develop the country’s innovation goals, priorities, and long-term national strategy on innovation.



### Priority Infrastructure Projects

The Build, Build, Build (“BBB”) Program is the centerpiece program of the Duterte administration. The program was anchored on the implementation of 75 flagship infrastructure projects that would create jobs, address the country’s infrastructure needs, and boost the local economy. Financing the majority of the BBB projects was envisaged through Official Development Assistance (“ODA”) funding as opposed to public-private partnerships (“PPPs”).



As of July 2019, only nine out of the 75 BBB infrastructure projects are under construction and the National Government is now revisiting the use of PPPs to finance infrastructure projects.

### **Reduction of Corporate Income Tax & Rationalization of Fiscal Incentives**

A bill proposing the enactment of the Corporate Income Tax and Incentives Rationalization Act (“**CITIRA**”) is being considered by Congress. The bill CITIRA seeks to encourage investments in the Philippines by gradually reducing the current corporate income tax (“**CIT**”) and to update the country’s existing fiscal incentives regime.

The CITIRA, in its current form, also limits the grant of fiscal incentives to registered activities of (i) exporters and (ii) industries listed in the Philippine Government’s Strategic Investments Priority Plan. Under the CITIRA, the current incentive granting a perpetual 5% tax on gross income earned will be phased out.

### **Reforms in Energy Regulation**

In his 2019 State of the Nation Address Philippine President Rodrigo R. Duterte emphasized the need to fast track the development of renewable energy (“**RE**”) resources to reduce the country’s dependence on traditional energy sources such as coal.

On October 2019, the Department of Energy (“**DOE**”) issued Department Circular (“**DC**”) No. 2019-10-0013 or the Omnibus Guidelines Governing the Award and Administration of Renewable Energy Contracts and the Registration of Renewable Energy Developers (the “**RE Guidelines**”). The RE Guidelines were issued to harmonize existing rules and procedures governing the system of awarding RE contracts as well as the registration of RE projects.

The RE Guidelines also prescribe a template contract for biomass, geothermal, hydropower, solar, ocean, and wind energy resources. Holders of contracts that were entered prior to the effectivity of the RE Guidelines may convert to the new template.

# THAILAND

## Legal Developments

### Amended PPP Act

The new Public-Private Partnership Act 2019 (“**PPP Act**”) came into force on 11 March 2019 replacing the previous 2013 PPP Act. The new PPP Act clarifies project owner step-in rights and remedies the focus on “mega-projects”, vagueness of the definition of State participation, confusion as to the PPP approval process and long delays that were common issues under the old law. This amendment also creates the PPP Policy Committee, Contract Management Committee and PPP promotion fund to promote transparency and greater private sector involvement in PPPs.

### Data Protection Moving Forward in Thailand

The need to establish a domestic data protection framework in Thailand is beginning to take shape with the publication of the Personal Data Protection Act in the Royal Thai Government Gazette on 27 May 2019 (“**PDPA**”). The PDPA aims to regulate the collection, use and disclosure of personal data and reflects some of the main principles arising from other regulatory frameworks such as the General Data Protection Regulation (“**GDPR**”) within the European Union.

The provisions of the PDPA relating to personal data processing will come into effect from 28 May 2020. The Personal Data Protection Committee, established under the PDPA, is also expected to generate a number of guidelines and sub-regulations in 2020 to implement the new data protection framework.

### Peer-to-Peer (“P2P”) & Crowdfunding Regulations

The Bank of Thailand (“**BOT**”) issued Notification No. Sor Nor Sor 4/2562 regulating the operation of P2P lending platforms. All websites or mobile applications or other electronic media developed for P2P lending and operating in Thailand are included within this Notification which defines borrowers as individuals or natural persons only.

For crowdfunding activities, the SEC issued notification 21/2562 Re: The Offering of Securities for Sale through Crowdfunding Portals. Under this, crowdfunding portals or platforms are defined as websites or mobile applications or other electronic media developed and deployed for the offer of securities, being crowdfunding shares and debentures.

P2P lending and crowdfunding platforms are expected to see much more dynamism, growth and investment interest in 2020, as the hype in cryptocurrencies and the ICO market has largely abated.



### Thailand’s Move to Medicinal Marijuana

Cannabis for medicinal purposes has been moved a category 5 drug pursuant to the Drug Abuse Act (No. 7) 2019. Individuals who have obtained a license can produce, possess, import, and export cannabis for the purpose of treating diseases and other medical conditions, subject to certain stringent conditions.

## Future Legislation & Developments to expect

### Merger Control Regime Now in Full Operation

While the new Trade Competition Act 2017 (the “**TCA**”) took effect from 5 October 2017, the TCA’s merger control regime had not been in full operation pending the establishment of the Trade Competition Commission (“**TCC**”). Having issued TCC guidelines on unfair trade practices, particularly concerning wholesale/retail business operators, from 29 December 2019, the TCC is expected to give full effect to the merger control regime under the TCA. The TCC’s notifications will provide clarity on the thresholds of merger transactions to be subject to notification duty to or review by the TCC, including definitions of monopoly and market dominance, and merger transactions falling under the purview of the merger control regime.

## Fintech

In 2020, the SEC/BOT is expected to issue notifications on P2P lending to SMEs, balance sheet lending to SMEs and Invoice financing to SMEs.

## Introduction of Regulatory Control Over Franchise Businesses

In December 2019, the TCC issued the notification setting out criteria of unfair trade practices in the franchising business, due to come into force on 4 February 2020. The law will require franchisors to disclose essential commercial terms to franchisees (e.g. franchise fees, royalty fees, marketing and training expenses, business plan, amount of adjacent franchisees, rights and obligations concerning trademarks). The law also requires franchisors to inform franchisees in the case that it wishes to expand the business into territory nearby that of the franchisee and must provide an option for the franchisee to decide whether such a branch should be opened.

## Eastern Economic Corridor (“EEC”)

Investment in the EEC is expected to ratchet up in 2020, with the growth rate likely to be higher than projections by state agencies. The EEC project is instrumental in driving economic growth this year and next and will help offset the negative impact of the ongoing trade row between the US and China.

A PPP for the High-Speed Rail Linking Three Airports Project in the EEC was finally signed between SRT and the project company established by the CP led consortium in October 2019. However, tumultuous politics and governmental tensions have affected the progress of the rest of the PPP program approved under the previous government. In this context, the effects of the new 2019 PPP Act remain to be seen.



## Post-2019 Elections

The first general election since the 2014 coup was held in March 2019 and involved a long political process until the nomination of a new government on 16 July 19.

The new civil government formed by a 19 party coalition led by General Prayuth came to power with a very slim majority. This election saw the emergence of a new political party, the Future Forward, as the third largest party, reflecting the voice of the young urban generation into Thai politics.

2020 will tell how the new political forces and dynamic will interplay.

## Thai Economy

2019 saw a clear slow-down of the Thai economy, with average GDP growth barely touching 2.5% (as opposed to 3.3-3.8% as initially forecast). The export-led Thai economy is being severely affected by the strong appreciation of the Thai Baht making Thai exports less competitive. Global geopolitical and trade tensions have also indirectly affected Thailand, and directly in the case of the US, which is due to suspend USD 1.3 billion of preferential trade benefits for Thailand with effect in April 2020. Agricultural crop exports also fell in the first half of the year due to severe drought. The continuously growing level of private borrowing is also of serious concern. Nonetheless, the dynamism of Thai outbound investment is a confirmed trend, as a number of large Thai conglomerates are furthering their investment development strategies in the South-east Asian region and beyond (notably in the renewable energy, food and agribusiness, tourism and service sectors).



# VIETNAM

## Legal Developments

### New Competition Law

On 1 July 2019 the new Competition Law came into force. The key changes include: (i) more explicit inclusion of extra-territorial entities within the scope of the law; and (ii) revision of substantive prohibitions to a) replace sole reliance on market share thresholds under the old merger regime with an assessment of various criteria to determine if the concentration will, or is capable of, significantly restricting competition; and b) expansion of the scope of the prohibitions against anti-competitive agreements. Meanwhile, a decree on administrative penalties to be imposed for breaches of the competition law was issued with effect from 1 December 2019. At the time of writing, the new Competition Law has not been fully implemented pending issuance of required implementing regulations and appointment of the regulatory authority.

### Draft Law on Public-Private Partnerships

On 11 November 2019, a draft Law on Public-Private Partnerships (“**Draft PPP Law**”) was officially submitted to the National Assembly of Vietnam for discussion. It is expected to eliminate problems that are not realistically suitable and effective for PPPs, and attract more private sector participation. The key changes relate to:

- Permitted sectors for PPPs;
- Minimum capital for projects of VND 200 billion; and
- Permission for enterprises issuing corporate bonds to raise capital but not public shares for the projects.

There will be two systems of investment protection, including risk sharing and foreign currency balance. A risk sharing mechanism between the Government and investors that does not exceed 50% of the deficit between actual revenue and contracted revenue. The foreign currency balance ensures that the project’s revenue will have a limit of 30% in VND after subtracting the VND denominated expenses. The draft PPP Law is expected to be passed in May 2020.

### New Feed-in-Tariffs for Solar Power Projects in Vietnam

Decision 11 dated 11 April 2017 offering premium feed-in tariffs (“**FiT**”) of 9.35/kWh for solar projects with signed PPAs that came online by the due deadline in Vietnam (“**Decision 11**”) expired on 30 June 2019.

However, the Prime Minister did not issue a new FiT applicable from 1 July 2019. Vietnam’s Ministry of Industry and Trade (the “**MOIT**”) recently issued Official Letter 9608 on 16 December 2019 indicating that approved solar projects with signed PPAs that come online before the end of 2020 can avail of a new (lower) FiT to be issued. Projects completed after this point would be assigned FiTs on an auction basis.



### Penalties for Illegal Use of Foreign Currency in Vietnam

Decree No. 88/2019/ND-CP (“**Decree 88**”) came into force on 31 December 2019, clarifying fines for illegal foreign exchange operations.

Illegal foreign currency transactions from USD 1,000 to 100,000 will face fines of between VND 10 million to 100 million (approximately USD 450 – 4,500). A fine of up to VND 250 million (approximately USD 11,000) will be imposed on illegally importing or exporting foreign currency or VND in cash.

Credit institutions that conduct illegal foreign exchange transactions with one another or with customers will be fined VND 150 to 200 million.



## Labour Developments

The National Assembly of Vietnam adopted the Labor Code No. 45/2019/QH14 ("**New Labor Code**"), which will come into effect on 1 January 2021 and replace the current law which dates from 2012. Some significant changes are introduced in this New Labor Code including:

- *New definition of labor relationship:* the New Labor Code explicitly provides that where a contract is identified as something other than a labor contract, but such contract contains “works to do”, wage, and working under management of a person/organization, then the labor authorities will regard that contract as a labor contract.
- *Labor contracts:* there are two types of labor contracts: definite term labor contracts and indefinite term labor contracts only. Foreign employees may sign definite-term labor contracts multiple times.
- *One additional public holiday:* employees will be entitled to one more national holiday, with full salary payment, on the day preceding or following Independence Day (2 September).
- *Retirement ages:* the roadmap to increasing the retirement age is demonstrated in this New Labor Code. Accordingly, the retirement age for male employees and female employees will be increased annually to reach 62 and 60 years of age respectively under normal working conditions, by 2028 and 2035 respectively.
- *Termination of labor contracts:* employees, regardless of the term of labor contract, can unilaterally terminate a labor contract without providing reasons, as long as they serve the required advance notice.

## Tax Developments

### New Law on Tax Administration

The new Law on Tax Administration No. 38/2019/QH14 ("**LTA**") passed by the National Assembly in June 2019 will become effective from 1 July 2020.

The new Law introduces the ‘substance over form’ principle to determine tax obligations with respect to entities and transactions in Vietnam and enshrines the “independent transactions” principle for determining a taxable price in related party transactions.

The LTA mandates enhanced cooperation with foreign tax authorities in terms of tax collection and sharing of taxpayer information, more effective mechanisms to enforce tax compliance in cross-border e-commerce activities and the creation of a national e-payment system to document e-commerce transactions for tax collection purposes.

Updated rules on tax audits, clarity on private rulings, taxable presence definitions, PIT finalization extensions and new rules on E-signatures also feature in the new LTA.



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