

# ASEAN ROUNDUP



# CONTENTS

| NO. | COUNTRY   | CONTENT                                                                                | PAGE |
|-----|-----------|----------------------------------------------------------------------------------------|------|
| 1   | Singapore | Financial Services and Markets Act 2022 - Digital Token Licensing Regime (Parts 1 & 2) | 4    |
| 2   | Singapore | Winding Up or Arbitration? Fresh Guidance from the Singapore High Court                | 14   |
| 3   | Indonesia | Update on Beneficial Owner Requirements                                                | 19   |
| 4   | Malaysia  | Arbitrators in Arbitration Proceedings: Bound by Precedent or Free to Decide?          | 23   |
| 5   | Cambodia  | Cambodia Issues New Tax Rules for Trust Operations                                     | 27   |
| 6   | Cambodia  | Exemption Requests under Cambodia's Competition Law for Franchise Agreements           | 29   |
| 7   | Laos      | Decision on Forest Carbon Management in Laos                                           | 32   |
| 8   | Laos      | New Trade Inspection Implementation Decision in Laos                                   | 35   |
| 9   | Myanmar   | Myanmar Regulates EV Imports and Reduces Fuel Vehicle Customs Duties                   | 39   |
| 10  | Thailand  | Thailand to Step Up Enforcement of Royal Decree on Digital Platform Services           | 44   |
| 11  | Thailand  | Nominee Trap: Legal Risks and Licensing under Thailand's Foreign Business Act          | 47   |
| 12  | Thailand  | Thailand to Regulate Offshore Digital Asset Businesses                                 | 49   |
| 13  | Vietnam   | Vietnam Issues Fintech Sandbox Decree                                                  | 52   |
| 14  | Vietnam   | Vietnam Issues Personal Data Protection Law                                            | 54   |
| 15  | Vietnam   | Wider Skies: Vietnam Expands Aviation Market to More Aircraft Types                    | 56   |



# SINGAPORE

DREW & NAPIER LLC

## Financial Services Regulation Legal update

# Financial Services and Markets Act 2022 - Digital Token Licensing Regime (Part 1)

### Introduction

The FSMA is an omnibus legislation pertaining to sector-wide regulation of financial services and markets. It applies to financial institutions including but not limited to banks, insurers, financial advisers and digital token service providers (“**DTSPs**”). The FSMA explicitly details the general powers of the MAS over financial institutions, such as inspection powers, and also includes provisions addressing anti-money laundering and/or countering the financing of terrorism (“**AML/CFT**”), financial dispute resolution schemes, technology and risk management, as well as the issuance of Prohibition Orders (“**POs**”).

The FSMA, which introduces a new regime to regulate DTSPs, will impact Singapore incorporated companies, or individuals or partnerships acting from a place of business, that provide digital token (“**DT**”) services outside of Singapore. The scope of digital token services is broad, and includes but is not limited to dealing in, facilitating the exchange of, arranging, inducing, and safeguarding digital tokens.

Given the wide ambit of DT services, exchanges, market makers, custodians and advisory platforms are all expected to be subject to the FSMA, which applies to both Digital Payment Tokens (“**DPTs**”) and tokenised real-world assets. A DTSP that contravenes the licensing requirement is guilty of an offence and may be liable to penalties such as a fine and/or imprisonment.

The FSMA has been implemented in phases. Phase 1 commenced on 28 April 2023, which migrated, among other things, MAS’ general powers over financial institutions from the Monetary Authority of Singapore Act 1970 (“**MAS Act**”) to the FSMA. Phase 2A and 2B commenced on 10 May 2024 and 31 July 2024 respectively – these covered new provisions on technology and risk management and control over financial institutions (and other miscellaneous provisions from the MAS Act).

On 30 May 2025, the Financial Services and Markets Act 2022 (Commencement) Notification 2025 (“**FSMA Commencement Notification**”) was published. The FSMA Commencement Notification brings into operation, on 30 June 2025, Part 9 and sections 183(b) and (c) and 214 of, and the First and Second Schedules to, the Financial Services and Markets Act 2022 (“**FSMA**”, and such provisions, collectively, the “**DTSP Provisions**”).

As there is no transitional arrangement for DTSPs, DTSPs that are subject to licensing under the FSMA must suspend or cease carrying on a business of providing DT services by 30 June 2025 (“**Commencement Date**”), when the DTSP Provisions come into operation.

In tandem with the FSMA Commencement Notification, the MAS has on 30 May 2025 also responded to the previous consultation paper it issued on 4 October 2024 (“**FSMA Consultation Paper**”) on the proposed regulatory approach for DTSPs.

In the FSMA Consultation Paper, the MAS sought responses on the regulation of:

- a) Individuals and partnerships who, from a place of business in Singapore, carry on a business of providing a DT service outside Singapore; and
- b) Singapore corporations that carry on a business, whether from Singapore or elsewhere, of providing a DT service outside Singapore.

We discuss the MAS' response to the FSMA Consultation Paper ("**Response**") in this legal update.

### **Regulatory Approach to DTSPs Under the FSMA**

By way of the DTSP Provisions, the MAS intends to regulate DTSPs which are individuals, partnerships, or Singapore corporations that are operating from a place of business in Singapore, or that are formed or incorporated in Singapore, but carry on a business of providing DT services outside Singapore. In determining whether an entity is providing DT services outside Singapore, relevant factors include whether its front-office functions or customers are located outside Singapore.

As previously mentioned in the FSMA Consultation Paper and again reiterated in the Response, the MAS has mentioned that it will only consider granting a licence under section 138 of the FSMA ("**DTSP Licence**") in "*extremely limited circumstances*".

This is because, in *most* cases, persons who have a place of business in Singapore or are Singapore corporations will carry on a business of providing DT services in Singapore, and will therefore already be subject, where applicable, to the existing regulatory frameworks established by the Payment Services Act 2019 ("**PS Act**"), the Securities And Futures Act 2001 ("**SFA**"), and/or the Financial Advisor Act 2001 ("**FAA**") and so will generally not be subject to licensing and ongoing requirements for DTSPs under the FSMA (see our comments in the next paragraph). This is the exemption under section 137(5) of the FSMA.

### **Financial Services and Markets Regulations**

MAS has published all finalised versions of the subsidiary legislation, notices and guidelines relating to the DTSP Provisions ahead of the Commencement Date. These documents are accessible [here](#). The main areas covered by the Financial Services and Markets Regulations are discussed below.

#### ***DTSP Licence fees***

MAS has maintained its original proposed annual DTSP Licence fees of S\$10,000. This is payable by all DTSP licensees ("**DTSP Licensees**"), regardless of their size or scope of business operations, or the number of DT services they provide.

### ***Financial Requirements***

MAS has also maintained its original proposed initial and ongoing financial requirements applicable to DTSPs, which is S\$250,000 in base capital, total capital contribution and cash deposit in the case of a company, partnership or limited liability partnership and individual respectively.

### ***Business Conduct***

In relation to business conduct, the Financial Services and Markets Regulations set out requirements relating to the approval of the CEO, directors, partners or managers of a DTSP Licensee, as well as audit requirements. MAS has provided further guidance that licensees must have appropriate compliance management arrangements, which may take the form of an independent compliance function in Singapore, or compliance support from its holding company or overseas related entity.

### **Financial Services and Markets Notices**

#### ***Overview***

MAS has proposed to issue notices and guidelines which will come into force on the Commencement Date. MAS has made available drafts of these notices and guidelines together with the Response, accessible [here](#).

MAS has also clarified that although an individual who is located in Singapore and is carrying on a business of providing DT services to persons outside of Singapore would attract regulation under section 137(1) of the FSMA, where an individual is an employee of a foreign-incorporated company that provides DT services outside Singapore, work done by such individual as part of his employment would not in itself attract a licensing requirement under that section.

### ***AML/CFT Requirements***

DTSP Licensees are to perform customer due diligence (“**CDD**”) measures as required under the proposed FSM Notice FSM-N27, in respect of all customers with whom they had established business relations with prior to obtaining its DTSP Licence as well as those who continue to be its customers upon obtaining their DTSP Licence.

MAS has clarified that it will not prescribe any baseline timelines to complete the required CDD measures, although it will determine the relevant timeline on a case-by-case basis on the point of licensing. Further, FSMA Licensees should have internal processes to assess required measures to comply with any subsequent revisions of CDD requirements.

In relation to the reliance by DTSP Licensees on third parties to perform CDD measures, the MAS has maintained its position that DTSP Licensees shall not be permitted to rely on licensed payment service providers and financial institutions for compliance with AML/CFT requirements. This is due to the uneven level of AML/CFT controls across the payment sector in Singapore and globally.

In relation to DTSP Licensees which engage in the provision of correspondent account services, the MAS will also provide further guidance in the Guidelines to the FSM-N27 Notice to help such licensees assess the suitability of the respondent/correspondent financial institution that is involved in the correspondent account services.

MAS has also maintained its position that DTSP Licensees should be prohibited from issuing bearer negotiable instruments or paying cash out equal to or exceeding S\$20,000, on the basis that such cash-based transactions entail heightened money laundering / terrorism financing risk exposure.

In relation to the value transfer requirements which the MAS has proposed to impose on certain DTSP Licensees who facilitate the value transfer of one or more DTs, the MAS has emphasised that any DTSP Licensee which is:

- a) an ordering institution – is required to verify the value transfer originator's identity prior to effecting or arranging the value transfer; or
- b) a beneficiary or intermediary institution – is required to take reasonable measures to identify value transfers that lack the required value transfer originator or beneficiary information and to implement measures to determine when to execute, reject or suspend such transfers and the appropriate follow-up action.

These are meant to align Singapore with standards promulgated by the international Financial Action Task Force ("**FATF**"), which has advocated for more stringent and extensive value transfer requirements to mitigate money-laundering / terrorism financing risks.

### **Notices on Reporting Requirements, Technology Risk-Management and Cyber Hygiene**

#### ***Suspicious activities and fraud***

Pursuant to the MAS' Notice on Reporting of Suspicious Activities and Incidents of Fraud ("**FSM-N28**"), licensees must lodge a report with MAS within five (5) working days upon the discovery of any suspicious activities and incidents of fraud which is material to the safety, soundness or reputation of the licensee. However, MAS does not intend to prescribe the materiality of a suspicious activity or incident of fraud. For incidents of fraud, licensees are also required to lodge a police report and submit a copy of the same to MAS. If a licensee has not lodged a police report, it is required to notify MAS of the reasons for its decision.

#### ***Regulatory reporting***

In addition, MAS' Notice on Submission of Regulatory Returns ("**FSM-N29**") imposes other regulatory reporting obligations on licensees over varying periods of time, which were intended to allow MAS to understand and monitor the profile of each licensee's DT services and supervise on a more targeted basis.

### ***TRM Guidelines***

As proposed in the FSMA Consultation Paper, MAS will go ahead and introduce new measures for DTSP Licensees to manage technology risks, in addition to those measures and practices recommended for adoption under MAS' Guidelines on Risk Management Practices – Technology Risk ("**TRM Guidelines**").

Under the MAS' Notice on Technology Risk Management ("**FSM-30**"), licensees are required to maintain a high level of reliability, availability and recoverability of critical IT systems and implement IT controls to protect customer information from unauthorised access or disclosure. These measures include: establishing frameworks to identify critical systems, ensuring that unscheduled downtime does not exceed four (4) hours within any 12-month period and setting a recovery time objective of no more than four (4) hours for each critical system. Further, in the event of a system malfunction or IT security incident with severe and widespread impact, a licensee must notify MAS within one (1) hour of discovery and thereafter submit a detailed root cause and impact analysis report within 14 days.

### ***Cyber Hygiene***

MAS will require DTSP Licensees to implement measures set out under the MAS' Notice on Cyber Hygiene ("**FSM-31**"), which are also additional to the TRM Guidelines. Such measures include securing administrative accounts against unauthorised access, implementing security patches in a timely manner, enforcing network perimeter defence and malware protection, and strengthening user authentication. These additional requirements are in line with MAS' broader push for cyber resilience across the financial services industry.

## **Notices on Conduct and Disclosures and Communications**

### ***Conduct***

MAS intends to impose conduct requirements on licensees. The proposed Notice on Conduct ("**FSM-N32**") details these conduct requirements, including those pertaining to a DTSP Licensee's minimum operating days and hours, display of exchange rates and fees, transaction recordkeeping as well as its issuance of receipts.

DTSP Licensees should note that FSM-N32 mandates a DTSP Licensee to appoint at least one (1) person present at its permanent place of business for a minimum of 10 days each business month and a minimum of eight (8) hours on each of those days during its normal business hours unless (a) the DTSP Licensee has notified all its customers in advance of any planned non-operating days of its DT services or (b) there are circumstances beyond the DTSP Licensee's control that prevent it from meeting the specified days and hours.

### ***Disclosures and Communications***

Under MAS' Notice on Disclosures and Communications ("**FSM-N33**"), MAS will require DTSP Licensees to provide all customers and potential customers with the prescribed risk warning statement set out in Annex A of FSM-N33. However,

MAS will not set out requirements on the number and types of languages which the DTSP Licensees must provide the risk warning statement in and will leave it to the DTSP Licensee to determine based on its business nature and customer base.

Similarly, a DTSP Licensee must always ensure that its representation as to the scope of its DTSP Licence and/or regulation by MAS is at all times accurate – this includes correcting any false or misleading statements by third parties about the DTSP Licensee's regulatory status.

Both FSM-N32 and FSM-N33 took effect on 30 June 2025.

### **Guidelines Applicable to DTSP Licensees**

MAS has confirmed that existing guidelines applicable to all financial institutions will likewise apply (without amendment) to all licensees under the FSMA, including DTSP Licensees. MAS guidelines are intended to set out industry principles and best practices and include the Guidelines on Fit & Proper Criteria, Outsourcing, Business Continuity Management and TRM Guidelines.

### **Conclusion**

Given that the DTSP Provisions will come into force very soon and that there is no transitional arrangement for DTSPs, to minimise any interruptions in their businesses, entities should promptly review their legal structures and business activities.

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## Financial Services and Markets Act 2022 - Digital Token Licensing Regime (Part 2)

### Overview of the FSMA

As discussed in Part 1 above, generally, the FSMA requires that any individual who, carries on a business of providing Digital Token (“DT”) services outside of Singapore from a place of business in Singapore, to hold a license. However, entities required to be licensed and/or exempted from licensing pursuant to the Securities and Futures Act 2001 (“SFA”), Financial Advisers Act 2001 (“FAA”) and the Payment Services Act (“PS Act”), amongst others, need not apply for and/or obtain a digital token service provider (“DTSP”) license, in respect of activities for which they are already licensed and/or exempted under the SFA, FAA or PS Act respectively.

### Frequently Asked Questions (FAQs)

#### a) Does a PS Act entity need to comply with the FSMA?

The FSMA aims for the alignment of requirements imposed on the various entities within the purview of the MAS, such as digital payment token (“DPT”) service providers regulated under the PS Act as well as DTSPs under the FSMA. The FSMA also seeks to consolidate the various powers vested in the MAS so as to enhance regulatory effectiveness.

Due to the consolidation of powers, various entities offering DT services, such as exchanges, market makers and custodians mentioned above, may now be subject to the FSMA. This includes the need to comply with Technology Risk Management (“TRM”) requirements, or that the entity may be subject to Prohibition Orders (“POs”) issued by the MAS.

However, this does not mean that a separate license under the FSMA necessarily needs to be obtained. We elaborate on this in Q2 *below*.

#### b) Does this FSMA update mean that my company needs to obtain a license?

Pursuant to the FSMA, the following entities need not apply for a license under the FSMA:

1. Entities require to be licensed, approved or recognition under the SFA;
2. Entities exempted from licensing, approval or recognition under the SFA;
3. Entities required to be licensed under the FAA;
4. Entities exempted from licensing under the FAA;
5. Entities required to be licensed under the PS Act;
6. Entities exempted from licensing under the PS Act;

7. Any entity specified in the Second Schedule of the FSMA (e.g. any public statutory corporation established in Singapore); and
8. Any entity that belongs to a prescribed class of persons, in respect of activities for which they are already licensed and/or exempted under the SFA, FAA or PS Act respectively.

Following from the above, any company that currently possesses a license under the SFA, FAA and PS Act will not be required to apply for and obtain a separate license under the FSMA in respect of activities for which they are already licensed and/or exempted under the SFA, FAA or PS Act respectively.

**c) I have a PS Act license. Does it mean that I now need a FSMA DTSP license for my overseas customers?**

No, a regulated PS Act entity operates pursuant to its existing PS Act license, which covers regulated activities managed and operated out of Singapore for both local and foreign customers.

**d) Does the FSMA expand its scope to now cover entities that offer cryptocurrency derivatives?**

The FSMA defines a DT to mean a (i) DPT or a (ii) digital representation of a capital markets product which can be transferred, stored or traded electronically and satisfies such other characteristics as may be prescribed.

The PS Act generally regulates payment services including DPT services as well as merchant acquisition, account issuance and more. As such, cryptocurrency derivatives, which are akin to investment products, are not within the ambit of the PS Act, which generally concerns service providers.

The SFA, which regulates capital markets products, such as securities, futures contracts, collective investment schemes and more. In May 2020, the MAS published its response to feedback received in relation to derivative contracts on payment tokens (i.e. cryptocurrency derivatives). The MAS clarified that cryptocurrency derivatives traded on approved exchanges can be regulated under the SFA, but cryptocurrency derivatives offered by overseas or unregulated platforms do not fall within the purview of the SFA.

Additionally, in August 2023, the MAS introduced a regulatory framework in relation to single-currency stablecoins ("SCS"). The SCS regulatory framework applies to stablecoins pegged to a single currency that is the Singapore Dollar or any G10 currency and issued solely out of Singapore. The issuers of such SCS will also be subject to additional requirements, such as maintaining minimum base capital, having their reserve assets subject to audit, and must provide appropriate disclosures to users.

Following from the above, it must be noted that non-SCS stablecoins are likely to be considered a DPT (and thus subject to regulation under the PS Act). For the avoidance of doubt, where the underlying asset of a derivative is a stablecoin, the derivative may constitute a capital market product.

In summary, cryptocurrency derivatives generally fall outside the scope of the FSMA, but may be subject to the PS Act and/or the SFA if stablecoins are the underlying asset of the derivative.

### **Key Highlights Pertaining to Existing PS Act Licensees**

**a) The FSMA harmonises and expands the power of the MAS to issue POs**

Previously, the MAS only could issue POs to certain specified persons under the FAA, SFA and the Insurance Act, such as trading representatives and/or insurance agents. The FSMA broadens the categories of persons who may be subject to POs, and widens the scope of activities for which the POs may be issued

**b) The FSMA consolidates existing TRM requirements such that any financial institutions and/or class of financial institutions is subject to the TRM requirements. This also illustrates the expectations that PS Act licenses are likely to be subject to.**

The FSMA increases the potential financial penalty for a breach of a TRM requirement to S\$1 million per breach. The FSMA also empowers the MAS to take other supervisory actions, such as requiring additional regulatory capital to be set aside until adequate TRM measures have been implemented.

**c) The MAS has elaborated on the audit requirements applicable to DTSPs pursuant to the FSMA, which illustrates the approach they are likely to take with respect to PS Act licensees.**

Licensees are required to appoint an auditor to conduct an audit of the transactions in relation to the DT services provided by the licensee, and submit the audit report to MAS annually. It is further noted that the audit report is directly taken into consideration as to whether the MAS may exercise their powers to require an auditor expand the scope of the audit and/or carry out further examinations.

### **Conclusion**

The FSMA, as an omnibus legislation, undoubtedly applies to a various individuals/entities engaged in various services. Importantly, this also includes DTSPs operating from Singapore but providing DT services outside of Singapore.

The FSMA consolidates and expands the powers conferred upon the MAS, mitigating regulatory arbitrage while simultaneously providing certainty to the entities caught within the ambit of the FSMA, be it a PS Act licensee or SFA licensee, as it also harmonises the expectations of the MAS on such licensees, be it in relation to TRM, audits, and/or anti-money laundering / countering the financing of terrorism requirements.

We recognise that the evolving regulatory landscape under the FSMA may present new challenges and require timely strategic responses, particularly for entities providing DT services across borders. Drew & Napier has been at the

forefront of these developments, having advised a broad range of stakeholders on the implications of the FSMA and participated actively in industry consultations. We are well-placed to assist clients in navigating the transitional framework, assessing the extraterritorial impact of the FSMA, and ensuring timely compliance with MAS expectations. Please feel free to reach out should you require support in preparing for the FSMA licensing regime or assessing how these changes affect your digital asset activities.

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## Arbitration Legal Update

# Winding Up or Arbitration? Fresh Guidance from the Singapore High Court

### Introduction

In *Aryan (SEA) Pte Ltd v Pure Group (Singapore) Pte Ltd* [2025] SGHC 99 (“**Aryan v Pure**”), the issue before the General Division of the High Court was whether to set aside a statutory demand and grant an injunction to restrain a creditor from presenting a winding-up application. The Court granted the injunction, finding that the debtor had raised substantial cross-claims falling within an arbitration clause, and that given the debtor’s ready ability to pay the debt, the insolvency process was not needed in this case.

The decision is a useful reminder that creditors should be cautious about invoking insolvency proceedings against a demonstrably solvent debtor where there is an arbitration agreement in place.

### Background

Aryan (SEA) Pte Ltd (“**Aryan**”) engaged Pure Group (Singapore) Pte Ltd (“**Pure**”) to provide project management services under an agreement (“**Agreement**”). Pure issued 3 invoices totaling S\$307,807.87 which Pure asserted were issued under the Agreement. Aryan paid S\$127,099.67, which it later claimed had been paid by mistake. The remaining S\$180,708.20 was left unpaid.

On 22 July 2024, Pure served a statutory demand on Aryan for the three invoices. Aryan denied liability, asserting bona fide and substantial cross-claims that Pure had breached the Agreement, and applied to set aside the statutory demand and restrain Pure from presenting a winding-up application.

Aryan contended that since the Agreement contained an arbitration clause, a genuine *prima facie* dispute within its scope would bar a winding-up application. Aryan also adduced evidence that it was a going concern and had more than sufficient resources to meet the claim, having more than S\$2.37 million in its bank account as of 8 August 2024.

In resisting the application, Pure raised three main arguments:

- a) first, the *prima facie* standard of review in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 (“**AnAn v VTB**”) should not apply in light of the Privy Council’s decision in *Sian Participation Corp (in liquidation) v Halimeda International Ltd* [2024] 3 WLR 937 (“**Sian**”), where the Privy Council applied the triable issues standard;
- b) secondly, there was no valid arbitration agreement covering the dispute and hence the triable issues standard should apply; and
- c) thirdly, there was neither a triable issue nor a *prima facie* dispute falling within the scope of the arbitration agreement, because: (i) the invoices largely related to manpower supply which was allegedly outside the scope of

the Agreement; and (ii) Aryan had not provided evidence or particulars of its cross-claims against Pure.

While the application was pending, on 2 April 2025, Aryan commenced arbitration proceedings under the Arbitration Act 2001.

### **The High Court's Decision**

The Court allowed Aryan's application for an injunction to restrain Pure from filing a winding-up application.

First, the Court reaffirmed that the Court of Appeal's decision in *AnAn v VTB* remains binding authority in Singapore. The Court observed that it was not open to the Court to depart from *AnAn v VTB* but that Pure was entitled, however, to invite an appellate Court to revisit the applicability of *Sian* in Singapore.

Under the *prima facie* standard set out in *AnAn v VTB*, winding-up proceedings will be stayed or dismissed as long as: (a) there is a valid arbitration agreement between the parties; and (b) the dispute falls within the scope of the arbitration agreement, provided that the dispute is not being raised by the debtor in abuse of the court's process.

In contrast, under the triable issues standard set out in *Sian* ([a decision we had previously commented on](#)), the test is whether the debt is disputed on genuine and substantial grounds, and this test applies regardless of whether the debt on which the application is based is subject to an arbitration agreement or an exclusive jurisdiction clause.

Secondly, the Court held that although the arbitration clause in the Agreement was ambiguously drafted, a valid arbitration agreement existed. The Court further found that the dispute concerning payment for the supply of tools and manpower fell within the scope of the arbitration clause as the work formed part of progressing the project in the Agreement toward completion.

Thirdly, having found that the dispute fell within the scope of a valid arbitration agreement, the Court stated that it was bound to apply the *prima facie* standard in *AnAn v VTB*. The Court emphasised that under this standard, the Court was required to refrain from evaluating the merits of the parties' claims and merely had to consider if Aryan putting forth its cross-claims amounted to an abuse of process.

While acknowledging Pure's argument that Aryan was refusing to pay an obvious debt and instead putting Pure to the time and expense of arbitration, the Court nonetheless found that Aryan's conduct fell short of the "very high bar" for abuse of process.

Notably, the Court observed that unlike the situation in *AnAn v VTB* where there were "legitimate concerns" in relation to the alleged debtor's solvency, Aryan could be described as "flush with cash" and was clearly solvent. The Court noted that accordingly, there were no third parties who could be harmed by an insolvent company continuing to trade while arbitration was pursued.

### Commentary

This decision contributes to a growing line of cases examining how Singapore courts approach the interplay between arbitration agreements and insolvency proceedings.

In particular, this decision reinforces how the Singapore Courts will not permit the insolvency regime to be used to sidestep valid arbitration agreements, particularly where:

- a) a *prima facie* dispute exists within the scope of a valid arbitration clause;
- b) the debtor is solvent; and
- c) the creditor cannot show that the debtor's conduct amounts to an abuse of process.

The Court's emphasis that it was "not able" to evaluate the merits of the underlying claims underscores the limits of judicial intervention under the *prima facie* standard. Unless and until this is revisited at the appellate level, the *prima facie* standard in *AnAn v VTB* continues to apply.

This decision should be read alongside the Court of Appeal's recent decision in *Sapura Fabrication Sdn Bhd and others v GAS and another appeal* [2025] SGCA 13 ("**Sapura Fabrication**"). In *Sapura Fabrication*, [a decision that we discussed in an earlier client update](#), the Court of Appeal clarified that the perceived "pro-arbitration" stance taken by the Singapore Courts in *AnAn v VTB* was taken in a context where policy considerations in the insolvency regime were not strictly engaged. Where the policy concerns in both arbitration and insolvency regimes are engaged (such as in *Sapura Fabrication*), the Court of Appeal will balance competing considerations, granting stays or carve-outs only where arbitration can proceed without undermining the broader objectives of the insolvency regime.

Together, these decisions underscore that arbitration and insolvency proceedings can coexist, but careful attention must be paid to the underlying context. For instance, a solvent debtor disputing a debt falling within a valid arbitration agreement (as was the case in *Aryan v Pure*) will be treated differently from debtor company engaged in restructuring proceedings where it is in the public interest for insolvency proceedings to conclude without delay to advance the collective interests of the general body of creditors (as was the case in *Sapura Fabrication*).

In light of these developments, creditors should:

- a) Assess the strength of any arbitration clause and whether the debt falls within the scope of the clause before issuing statutory demands.
- b) Consider if there are legitimate concerns about the solvency of the debtor or the debtor's ability to meet the debt. If the debtor is potentially insolvent and raises a *prima facie* but not triable dispute, the Court can grant a stay (as opposed to a dismissal) of the winding-up proceedings. The Court can then grant the creditor liberty to apply to Court to proceed with the winding up, if for example, it can be shown that the debtor-company has no genuine desire to arbitrate the dispute and is taking active steps to stifle the arbitration.

- c) Explore options to expedite debt recovery (such as those suggested by the Court in this decision) such as agreeing to appoint an arbitrator able to conclude any arbitration within a reasonable time or agreeing to waive the arbitration agreement to proceed under the express track set out under Order 46A of the Rules of Court 2021.

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# INDONESIA

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## Corporate Compliance Legal Update

### Update on Beneficial Owner Requirements

Indonesia has tightened its rules on beneficial ownership – the individuals who ultimately own, control or benefit from a company – to strengthen corporate transparency and combat financial crimes such as money laundering and terrorism financing activities.

Minister of Law Regulation No. 2 of 2025 on the Verification and Supervision of Beneficial Owners of Corporations (“**Regulation 2/2025**”) introduces stricter requirements for identifying, verifying and updating beneficial owner information. It also widens the scope of entities subject to reporting, increases compliance obligations, and sets out administrative sanctions for non-compliance.

Regulation 2/2025 came into effect on 4 February 2025 and replaces Minister of Law and Human Rights Regulation No. 21 of 2019 on the Procedures for Supervising the Implementation of the Know-Your-Beneficial-Owner Principle by Corporations (“**Regulation 21/2019**”).

The following are the key points of Regulation 2/2025.

#### a) **Wider Range of Obligated Corporations**

The new regulation expands the types of corporations subject to the beneficial owner reporting obligation, adding civil partnerships. It also classifies capital partnership companies and individual companies as limited liability companies subject to this requirement.

#### b) **Additional Obligations for Corporations**

In addition to the annual update of beneficial owner information required under Presidential Regulation No. 13 of 2018 on the Implementation of the Know-Your-Beneficial-Owner Principle by Corporations for the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes, Regulation 2/2025 mandates that corporations update their beneficial owner information whenever changes occur. Corporations are now also required to keep proper records and documentation of their beneficial owners and complete a related questionnaire.

#### c) **Risk-Based Verification Process**

Unlike Regulation 21/2019, which mainly served as a supervisory guideline for implementing the know-your-beneficial-owner principle, Regulation 2/2025 places greater emphasis on corporate responsibility and internal compliance measures. It introduces a risk-based verification process to assess the risks of money laundering and terrorism financing activities, referencing the National Risk Assessment by the Indonesian Financial Transaction Reports and Analysis Center, or the Sectoral Risk Assessment from a specific sector.

The verification of beneficial owners is conducted by:

1. The corporation itself, verifying the beneficial owner's information and supporting documents when establishing, amending or updating the corporation's records;
2. A notary, assessing and verifying the information provided by the corporation;
3. The Ministry of Law, assessing information submitted by the notary and the questionnaire submitted by the corporation; and
4. Other authorised institutions.

**d) Enhanced Government Supervision.**

Under Regulation 2/2025, the Minister of Law is authorised to process and analyse submitted data to ensure the accuracy of the information provided. For corporations deemed high-risk, the Minister of Law may also verify the accuracy of the beneficial owner information. If discrepancies are found, the Minister may conduct direct or indirect clarification with the corporation. Direct clarification includes summoning the corporation and/or conducting on-site inspections, while indirect clarification involves reviewing documents and/or making formal inquiries.

Regulation 2/2025 also allows the Minister to designate a different beneficial owner based on the corporation's verification, analysis and data processing.

**e) Implementation of Administrative Sanctions**

Regulation 2/2025 imposes administrative sanctions on corporations that either fail to submit beneficial owner information or provide inaccurate data. These sanctions include warnings, blacklisting, and blocking access to the Ministry of Law's online system (AHU online).

Following the enactment of Regulation 2/2025, corporations are expected to accurately identify, record and document their beneficial owners in line with the updated requirements. These obligations are intended to improve transparency and strengthen corporate governance. Also, to avoid any potential sanctions being imposed, corporations must ensure timely updates to their beneficial owner whenever changes or updates occur, maintaining full compliance with this new regulation.

*M&T Advisory is a digital publication prepared by the Indonesian law firm, Makarim & Taira S. It informs generally on the topics covered and should not be treated as legal advice or relied upon when making investment or business decisions. Should you have any questions on any matter contained in M&T Advisory, or other comments in general, please contact us at the emails provided at the end of this article.*

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A faint, light green map of Southeast Asia is visible in the background, showing the outlines of countries like Thailand, Laos, Vietnam, Cambodia, and Malaysia. The map is centered and serves as a subtle backdrop for the text.

# MALAYSIA

**SHEARN DELAMORE & CO.**

## Arbitration Legal Update

# Arbitrators in Arbitration Proceedings: Bound by Precedent or Free to Decide?

### Introduction

Recently, in *Datuk Bandar Kuala Lumpur v Sri Tinggi Sdn Bhd* [2025] MLJU 618, the High Court addressed the issue of whether an arbitrator is bound by the doctrine of *stare decisis*. The case arose from an application by Datuk Bandar Kuala Lumpur (“**DBKL**”) to set aside an arbitration award (“**Award**”) in favor of Sri Tinggi Sdn Bhd (“**STSB**”). The court ultimately ruled that an arbitrator is indeed bound by *stare decisis*.

### Case background

The dispute stemmed from a contract between *DBKL*, as the employer, and *STSB*, as the contractor, for the construction of a multi-level interchange at Jalan Ampang/Jalan Jelatek.

During arbitration proceedings, *DBKL* contended that clause 44 of the Conditions of Contract, which specified the period for claiming loss and expense, should be read in isolation. However, the arbitrator ruled that clause 44 must be interpreted alongside clause 43.

*DBKL*’s counsel referenced case law to advance the position that failure to comply with clause 44 was fatal, making *STSB* ineligible for its claim. The arbitrator, however, dismissed Malaysian case law on the interpretation of such clauses, asserting that:

- a) The legal principle of *stare decisis* is only applicable to court proceedings, not arbitration; and
- b) Most case law submitted were from court decisions, not arbitration cases, and therefore are not strictly applicable.

*DBKL* sought to set aside the Award, arguing that the arbitrator had flagrantly disregarded established Malaysian law and substituted his own legal theories without allowing parties to address them.

### High Court decision

The High Court held that the arbitrator’s decision not to be bound by the doctrine of *stare decisis* goes wholly against the law of the land. According to the High Court, the arbitrator had committed a denial of natural justice, conflicting with Malaysian public policy by wrongly disregarding and dismissing the doctrine of *stare decisis* merely due to his own belief that he was not bound by it.

In arriving to this decision, the High Court referred to, amongst others, the following decisions:

- a) The Federal Court decision in *Kerajaan Malaysia v Tay Chai Huat* [2012] 3 MLJ 149 which emphasised the importance of adhering to the doctrine of *stare decisis* to maintain a stable legal system and ensure consistency and predictability in the law;
- b) The decision in *UDA Land Sdn Bhd v Puncak Sepakat Sdn Bhd* [2020] 1 LNS 877 which applied the doctrine of *stare decisis* to arbitration proceedings and confirmed that arbitrators as “*inferior tribunals*” must follow binding precedent unless acting as *amiable compositeur* (which was not the case here); and
- c) The case of *Ipoh Tower Sdn Bhd v Taki Engineering Sdn Bhd* [2016] MLJU 1509 here the court held that the arbitrator was bound to follow Malaysian court precedent and should not have disregarded the doctrine of *stare decisis*.

The High Court held that the Award contravened “*public policy*” as the arbitrator had acted on a frolic of his own by disregarding Malaysian case law and relying solely on Malaysian statutes.

The Court explained that under Article 160 of the Federal Constitution, the term “*law*” encompasses (i) written law and (ii) the common law as it operates in Malaysia. Given that Malaysian common law encompasses judicial precedents established by Malaysian courts, decisions of Malaysian courts must be applied in cases before inferior tribunals, including arbitration proceedings. The arbitrator was duty-bound to consider and analyse the case law presented to him before deciding whether to accept, disregard, or dismiss them.

The High Court further ruled that the arbitrator’s refusal to apply precedent amounted to a breach of public policy and natural justice under sections 37 and 39 of the **Arbitration Act 2005**. The arbitrator had deprived the parties of their right to be heard on key legal points, failing to provide them with an opportunity to address his interpretation of the law.

In light of these findings, the High Court concluded that the Award ought to be set aside on the basis that the arbitrator had acted in excess of jurisdiction by failing to apply the doctrine of *stare decisis*.

### **Key takeaways**

This decision serves as a reminder that:

- a) Arbitrators in Malaysia cannot disregard judicial precedent, particularly when the governing law of the contract is Malaysian law; and
- b) Ignoring the doctrine of *stare decisis* can constitute a valid ground for setting aside an arbitral award.

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# CAMBODIA

TILLEKE & GIBBINS

## Tax Legal Update

# Cambodia Issues New Tax Rules for Trust Operations

On March 12, 2025, Cambodia's Ministry of Economy and Finance issued Prakas No. 192 on Tax Rules and Procedures for Trust to determine the tax rules and procedures for trust operations. With the exception of trusts whose legal form is a company or enterprise, all trustors, trustees, and beneficiaries engaged in trust operations in Cambodia are subject to this new regulation.

### Taxpayer Registration

A trustee company must register as a medium or large taxpayer. An independent individual trustee must register as a small, medium, or large taxpayer depending on the amount of turnover or the value of the fixed assets of the business, as stipulated in the Prakas on the Clarification of Taxpayers under the Self-Assessment Regime. Independent individual trustees must register as taxpayers within 15 working days from the commencement of economic activity or from the receipt of a license or authorisation from the Trust Regulator.

### Accounting Records

Accounting records should follow the rules stipulated in Article 6 of the Law on Taxation, which requires small taxpayers to use simplified accounting, while medium and large taxpayers must adhere to the Cambodian International Financial Reporting Standards (CIFRS). The trustee must maintain separate accounting records between its own operations and the trust. If the trustee manages more than one trust, the trustee must prepare separate records for each trust. For all the records, the trustee must clearly identify the ownership of all assets, liabilities, expenses, and other transactions.

### Taxation of Trustee's Income

Trust property or funds that are transferred to a trustee for management are not considered income or property of the trustee. However, any allowances or commissions that the trustee receives from managing the trust are taxed as income.

The trustee must follow the general rules on expenses outlined under Cambodian tax law to record all income and expenses related to managing the trust. The income tax rate, as set out in Article 20 of the Law on Taxation, is 20% on the taxable income of legal persons and a progressive rate between 0% and 20% on the taxable income of physical persons and sole proprietorships, and the share portions distributed to members of partnerships.

### **Taxation of Trust Property and Transactions**

Trust property could be subject to four types of tax regulation:

- a) *Tax on rental of immovable property*: The trustee must record any rental income earned from immovable trust property and pay a tax on rental of immovable property on this income.
- b) *Capital gains tax*: The trustee must record any income derived from the sale or transfer of capital and pay a capital gains tax on this income.
- c) *Withholding tax*: If the income has not already been subject to capital gains tax, the trustee must record any remittance of after-tax income to a non-resident taxpayer and pay a withholding tax (14%) on this transaction.
- d) *Stamp tax*: The trustee must record any transfer of ownership, right of possession, or share contribution involving immovable or movable property, trust property, or shares and pay a stamp tax on these transactions.

The trustee must comply with all other applicable tax laws and regulations. Existing regulations on tax exemptions are also applicable for trust property, if eligible.

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## Competition and Trade Legal Update

### Exemption Requests under Cambodia's Competition Law for Franchise Agreements

On April 2, 2024, the Cambodian Competition Commission (CCC) issued Decision No. 087 on Requirements and Procedures of Exemptions under the Law on Competition, outlining the requirements and procedures for requesting exemptions for agreements or activities that could prevent, restrict, or distort competition in Cambodia.

Franchise agreements often include clauses such as price fixing, exclusive supply arrangements, or territorial restrictions, which could potentially raise concerns under the Law on Competition. Therefore, it is necessary for both franchisors and franchisees to understand how the law applies to their agreements and whether an exemption request may be required.

Some arrangements under franchise agreements may fall within the scope of prohibited practices under the Law on Competition. These include horizontal and vertical agreements, abuse of dominant position, and anti-competitive business combination. If a business owner contemplates that their franchise agreement could be interpreted as anti-competitive, they must assess whether to apply for an exemption.

#### **Key Criteria for Exemption**

Under Decision No. 087, the CCC may grant an exemption if the applicant can demonstrate that the proposed agreement or activity meets all four of the following conditions:

- a) Significant and identifiable benefits: The agreement must provide clear technological, social, or economic benefits such as cost efficiencies, qualitative efficiencies, initiations of new technologies, or environmental and sustainable benefits.
- b) Necessity of the agreement/activities: These benefits must not be achievable without the proposed agreement or activity. The applicant must show that prevention, restriction, or distortion of competition are essential to realising the benefits.
- c) Benefits outweigh harm: The positive impacts must significantly outweigh any adverse effects caused by the prevention, restriction, or distortion of competition, and the benefits should be likely to materialise within one year.
- d) No elimination of competition: The agreement must not eliminate competition in any substantial aspect of goods or services.

#### **Application and Supporting Documents**

Applicants must submit the application form and provide evidence to support their exemption request. This typically includes submitting the franchise agreement and any other relevant supporting documents that demonstrate how the agreement or activities meet the above criteria for exemption.

**Pre-Application Consultation**

Decision No. 087 also allows a request for a consultation with the Consumer Protection Competition and Fraud Repression (CCF) Directorate-General before submitting a formal application. This step can help clarify the requirements and ensure that the application is complete and well-supported.

As many franchise agreements may contain provisions that are considered prohibited under competition law, it is essential to stay informed about the latest regulatory developments and the authorities' interpretation of such agreements and arrangements.

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# LAOS

**TILLEKE & GIBBINS**

## Corporate / M&A Legal Update

### Decision on Forest Carbon Management in Laos

On September 6, 2024, Laos' Ministry of Agriculture and Forestry (MOAF) issued Decision No. 4565/MAF on Forest Carbon Management. This decision, which took effect on October 29, 2024, enables Laos to participate in both domestic and international carbon markets. It outlines comprehensive guidelines for forest carbon activities, including investment procedures, carbon credit trading, and benefit allocation. The Department of Forestry (DOF), under the MOAF, oversees these activities and grants relevant permissions.

#### Definitions

The decision defines key terms related to forest carbon management:

- a) **Forest carbon:** Carbon dioxide (CO<sub>2</sub>) absorbed by forests, calculated in tonnes per hectare.
- b) **Forest carbon credit:** Quantity of CO<sub>2</sub> reduction, absorption, and storage, measured in tonnes of carbon dioxide equivalent (tCO<sub>2</sub>e), achieved through various projects or activities. These credits are verified for the reduction, absorption, and storage of CO<sub>2</sub> to mitigate greenhouse gas emissions. They can be exchanged and traded in accordance with established standards for greenhouse gas emissions.
- c) **Forest carbon trading:** An agreement between a buyer (domestic or foreign legal entity or government) and a seller (the owner of a forest carbon project) to trade tCO<sub>2</sub>e. This trading allows the buyer to offset greenhouse gas emissions that exceed the emission allowances set out in the Paris Agreement on climate change. The forest carbon sold becomes the property of the buyer.

#### Forest Carbon Business Operations

According to the decision, forest carbon business operations include:

- a) **Cooperation between the government and development partners:** This involves bilateral and multilateral cooperation based on international agreements and treaties. The use of carbon credits from this cooperation is not market-based but agreement-based, contributing to Laos' national climate change goals.
- b) **Forest carbon investment:** This includes direct government investments and joint investments with the private sector, international organisations, or communities. These investments aim to create forest carbon credits without granting exclusive rights to forest resources. Joint investments are partnerships, not land concessions.

### **Investment Requirements**

Investors in forest carbon credits must:

- a) Be a legally registered company.
- b) Have a business operating license for forest carbon trading issued by the MOAF.
- c) Have experience with forest resources and biodiversity.
- d) Demonstrate commitment to investing in forest management.
- e) Be technically ready and able to access forest credit markets.
- f) Possess land use rights or a village land concession agreement for forest plantations.
- g) Obtain approval from the DOF for the proposed investment area.

### **Proposal Procedures**

Investment in forest carbon credits proceeds along the following steps:

- a) The investor submits project documents to the MOAF through the DOF.
- b) The DOF reviews the proposal, inspects the area, and prepares a proposal for the MOAF regarding MOU approval.
- c) After the investor and the DOF sign the MOU, the investor must pay a deposit based on the project area size: USD 15,000 for areas up to 300,000 hectares and USD 30,000 for areas exceeding 300,000 hectares.
- d) The investor conducts a feasibility study within one year, extendable for one additional year.
- e) The DOF reviews the feasibility study and decides whether to issue a certificate of approval.
- f) Negotiate a memorandum of agreement (MOA) and seek government approval.
- g) If the MOA is not implemented within 180 business days, the MOAF may propose its cancellation.

### **Registration and Trading**

Forest carbon project registration involves the legal issuance of certificates to business owners to develop projects aimed at reducing greenhouse gas emissions from deforestation and forest degradation. This is done through bilateral or multilateral cooperation on forest carbon and trading.

Forest carbon trading may be conducted by allowing project investors to purchase carbon credits directly from the government, with the investment

amount deducted up front from the project. Upon completion of the trading, the project investor pays a percentage of the total forest carbon value generated by the project to the government and fulfills other obligations.

For trading forest carbon credits generated from natural forests, the MOAF will propose government approval. For credits generated from forest plantations, the project owner will seek approval from the MOAF.

### **Benefit Sharing**

Benefits derived from forest carbon activities are distributed between the government and investors or partners. Financial gains or carbon credits from natural forest areas or mixed plantations within the area of areas designated as protection forest, conservation forest, or production forest are to be shared between the government and project investors or other participants. The government will allocate financial benefits to central and local forestry sectors, as well as to communities and individuals in the project and surrounding areas, as appropriate or through specific mechanisms. For plantation forests, benefits are shared between the plantation owner and the government or other participants.

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## Competition and Trade Legal Update

# New Trade Inspection Implementation Decision Laos

On January 9, 2025, the Laos official gazette published the newly amended Decision on Trade Inspection Implementation No. 0019/MOIC, dated January 6, 2025.

This decision aims to establish principles and rules for trade officers to inspect, fine, and take measures against violators of trade laws and their related regulations on business competition, business operations, and intellectual property rights to protect consumers and business operators in Laos.

### **Changes in Trade Inspection Procedures**

Previously, trade inspection officers, operating independently under the central Ministry of Industry and Commerce (MOIC) or the provincial-level Department of Industry and Commerce (DOIC), were responsible for administrative raid actions focusing exclusively on intellectual property issues. However, following the enactment of Decision No. 0019/MOIC, trade inspection officers will now be grouped into the Trade Officers Unit, which will also include business competition officers and consumer protection officers. This unit will conduct and participate in raids, considering not only intellectual property laws but also competition and consumer protection laws when imposing penalties on infringers.

### **Trade Inspection Authority Levels**

Trade inspection implementation is overseen by authorities at three levels:

- a) Central level: Department of Business Competition and Trade Inspection, MOIC. The MOIC handles trade inspection work covering all provinces in Laos.
- b) Provincial level: DOIC offices in provinces and Vientiane handle trade inspections covering two or more districts.
- c) District level: Office of the Industry and Commerce offices in districts.

### **Violations**

Individuals, legal entities, and organisations violating the newly amended trade inspection decision, the Decree on Trade Inspection, or other related regulations will be educated about the issue, warned, disciplined (for government servants), fined, subject to compensation for damage incurred, or punished by the relevant laws, depending on the gravity of the violation.

### ***Trade Violations***

Violations of trade laws and regulations concerning business operations will result in fines and additional measures. Examples include:

- a) Failure to display product prices: Fines ranging from LAK 500,000 (approx. USD 25) to LAK 1,000,000 (approx. USD 50) per item.
- b) False advertising: Fines ranging from LAK 500,000 to LAK 5,000,000 (approx. USD 250) per item, with possible seizure or destruction of products.
- c) Defamatory advertising: Fines ranging from LAK 500,000 to LAK 1,000,000 if a complaint is filed.
- d) Incorrect labeling or failure to label in Lao language: Fines ranging from LAK 500,000 to LAK 5,000,000 per item, with possible seizure or confiscation of products.
- e) Counterfeiting labels: Fines ranging from LAK 200,000 (approx. USD 10) to LAK 2,000,000 (approx. USD 100) per instance, with confiscation of products and criminal prosecution.

### ***Intellectual Property Violations***

Minor offenses in violation of intellectual property laws will result in fines of 1% of the value of the damage incurred. Intentional violations will result in fines of 5% of the damage incurred per violation.

### ***False Business Operations***

Violations of the Enterprise Law No. 33/NA, dated December 29, 2022, will result in educational measures, warnings, disciplinary actions, fines, civil damages, or criminal penalties. Conducting business without a permit will result in similar measures.

### ***Unauthorised Trading***

Illegal trading of products will be punished or fined based on the value of the goods and compliance with ensuing legal obligations. Examples include:

- a) Import-export goods processed at incorrect checkpoints: Remedial education and warnings for goods below LAK 5 million, fines of 5% for goods valued between LAK 5 million and LAK 10 million, and fines of 10% for goods above LAK 10 million.
- b) Violations of the import and export regulations: Fines of 30% for the first offense, 50% for the second offense, and 70% for illegal import or export of goods.

### **Compliance**

Businesses need to ensure their compliance with the newly amended trade inspection decision and all related laws and regulations, as violating a trade regulation, operating a business without an Enterprise Registration Certificate, or conducting a business for illicit purposes involving illegal goods may result in civil or criminal proceedings, depending on the violation and applicable regulations—in addition to the fines and measures outlined above.

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# MYANMAR

TILLEKE & GIBBINS

## Competition and Trade Legal Update

### Myanmar Regulates EV Imports and Reduces Fuel Vehicle Customs Duties

Myanmar's Ministry of Commerce has established new regulatory measures for importing electric vehicles (EVs) as part of a pilot project running from January 2025 to March 31, 2026, while the Ministry of Planning and Finance has reduced customs duty rates for fuel-powered vehicles manufactured domestically under semi-knocked down (SKD) and completely knocked down (CKD) systems, effective June 1, 2025, to May 31, 2026.

#### Importation of EVs

On May 29, 2025, Myanmar's Ministry of Commerce (MOC) issued an announcement regarding the importation of EVs from abroad as part of its pilot project, detailed in MOC Notification No. 40/2025.

The MOC notification establishes the following regulatory measures to support the development of EVs and related businesses:

- a) Approval must be obtained from the National-Level Steering Committee for the Development of Electric Vehicles and Related Enterprises.
- b) A registration certificate for an EV sales showroom must be secured.
- c) Vehicles must be imported in accordance with the permitted number and standards defined by the National-Level Steering Committee for the Development of Electric Vehicles and Related Enterprises.
- d) The importing company must provide necessary arrangements for warranties on imported EVs, spare parts, and after-sales services.

For companies wishing to open a sales showroom, the following requirements apply:

- a) The company must be a registered national or joint venture entity with the Directorate of Investment and Company Administration.
- b) The company must be officially appointed as a distributorship or dealership by the original company or regional office for each brand.
- c) A permit from the respective state or regional government and a business license from the respective Municipal Committee must be obtained.
- d) The company must provide evidence of tax clearance issued by the Internal Revenue Department.
- e) Standards for the showroom, building, and warehouse, as issued periodically by the MOC, must be adhered to, including:

1. Compound area: 10,000 square feet (the total area for the showroom, service center, and waiting room must be 5,000 square feet).
  2. Warehouse: 5,000 square feet (with a roof and shelter already constructed, and its contents cleared).
  3. Showroom features: The front and sides must feature glass windows and comply with international standards.
  4. Signboard: 50 square feet, displaying the trademark of vehicles for which the distributor or dealer has been appointed, in accordance with international standards.
  5. Distance from the road: 12 feet (in accordance with requirements and construction standards for such buildings).
  6. The showroom must be located in a building that does not serve as residential housing.
  7. If the compound area meets the standards, the showroom and warehouse may be joined.
  8. A 10% deviation from the area requirements may be allowed depending on the location.
- f) The showroom and warehouse must be within the same state or region; and
- g) A bank guarantee of MMK 500 million deposited with the Central Bank of Myanmar is required from the importing company.

The MOC notification specifies that the EVs covered are battery electric vehicles (BEVs), including both cars and buses. It will be effective from January 2025 to March 31, 2026.

### **Customs Duty Rates for Fuel-Powered Vehicles**

On June 4, 2025, the Ministry of Planning and Finance (MOPF) issued Notification No. 39/2025, which reduces customs duty rates for the import of fuel-powered vehicles to be manufactured domestically under the SKD and CKD vehicle systems.

The MOPF notification announced the following new customs duty rates for the SKD system:

- a) Passenger vehicles of 2000 cc and below: 5% (reduced from 7.5%);
- b) Passenger vehicles of 2001 cc and above: 5% (reduced from 7.5%);
- c) Three-wheeled motorcycles (passenger): 3% (reduced from 7.5%);
- d) Three-wheeled motorcycles (cargo): 3% (reduced from 7.5%);
- e) Buses: 3% (reduced from 7.5%);

- f) Trucks and trucks for body building: 3% (reduced from 7.5%); and
- g) Motorcycles: 1.5% (reduced from 3%).

The customs duty rates for CKD systems have been set as follows:

- a) Passenger vehicles of 2000 cc and below: 3% (reduced from 5%).
- b) Passenger vehicles of 2001 cc and above: 3% (reduced from 5%).
- c) Three-wheeled motorcycles (passenger): 1.5% (reduced from 5%).
- d) Three-wheeled motorcycles (cargo): 3% (reduced from 5%).
- e) Buses: 3% (reduced from 5%).
- f) Trucks and trucks for body building: 3% (reduced from 5%).
- g) Motorcycles: 1.5% (reduced from 3%).

The reduced customs duty rates for SKD and CKD vehicle systems are effective from June 1, 2025, to May 31, 2026.

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# THAILAND

**TILLEKE & GIBBINS**

## Technology Legal Update

### Thailand to Step Up Enforcement of Royal Decree on Digital Platform Services

Thailand's Electronic Transactions Development Agency (ETDA) has announced plans for increased enforcement of the Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification B.E. 2565 (2022). The ETDA outlined a comprehensive enforcement framework and review process during an online meeting with digital platform service operators on June 11, 2025.

The ETDA's enhanced enforcement approach includes systematic reviews of notification submissions, formal correction orders, and potential criminal penalties for noncompliance. Digital platform operators should immediately assess their current notification status and prepare for increased regulatory scrutiny.

#### **Review and Amendment of Previously Submitted Notification Data**

The ETDA will begin reviewing operation notification forms and annual reports submitted by digital platform service operators to assess each platform's risk level and develop tailored regulatory obligations. In this comprehensive review process, the ETDA will:

- a) Examine the accuracy and completeness of submitted notification data;
- b) Request additional information as needed by phone or email; and
- c) Issue formal orders as needed requiring operators to correct or complete missing information.

Operators who fail to comply with ETDA orders may face suspension of operations, revocation of their notification receipt, and public disclosure of their noncompliant status on the ETDA's website. The ETDA conducted follow-up workshops in July 2025 for operators whose data were unclear or incomplete.

#### **Enforcement Framework and Penalties**

The ETDA outlined a three-tiered enforcement framework with escalating consequences for different types of violations, as follows:

- a) **Failure to notify before commencing operations:** Operators who begin services without proper notification may face criminal penalties under the Electronic Transactions Act, including up to one year of imprisonment, fines of up to THB 100,000 (approx. USD 3,070), or both. Additional consequences include suspension of operations and potential liability for company directors.
- b) **Failure to correct or comply with official orders:** Noncompliance with ETDA correction orders may result in suspension until corrections are made, prohibition of business operations until compliance is achieved, or revocation of notification if corrections are not completed within 90 days. The ETDA may also impose daily compulsory fines until full compliance is achieved.

- c) **Operating while suspended or notification receipt revoked:** Continuing operations during suspension or after revocation carries the same criminal penalties as failure to notify, including up to one year of imprisonment, fines of up to THB 100,000 (approx. USD 3,070), or both, plus potential director liability.

### **Appeals Process**

Orders issued by ETDA officials (e.g., for data correction) and orders issued by the ETDA director (e.g., for platform designation) must be appealed within 30 days of receipt. Orders imposing compulsory fines must be appealed within 15 days of receipt. Operators may escalate appeals to the Administrative Court if dissatisfied with initial outcomes.

### **Cross-Agency Collaboration**

The ETDA may coordinate with other government agencies to strengthen enforcement efforts. Key partnerships include collaboration with the Ministry of Digital Economy and Society for content takedown requests and coordination with foreign embassies for international enforcement matters.

### **Next Steps**

The ETDA conducted a second workshop in July 2025 to assist digital platform service operators in completing their data for notification. The ETDA also published a list of high-risk platforms during this period.

Digital platform operators should immediately review and update their submissions to ensure accuracy and completeness. Failure to correct unclear or incomplete data may result in legal action, including revocation of notification receipts and the enforcement of penalties outlined above.

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## Corporate / M&A Legal Update

### Nominee Trap: Legal Risks and Licensing under Thailand's Foreign Business Act

While Thailand's Foreign Business Act B.E. 2542 (1999) (FBA) has been in place for over two decades, the issue of nominee arrangements remains a hot topic—especially as authorities continue to crack down on businesses that use Thai nationals to hold shares in violation of foreign ownership restrictions under the FBA.

The FBA was enacted to limit foreign parties (which includes foreign individuals, offshore legal entities, and foreign majority-owned companies in Thailand) ability to conduct certain business activities in Thailand without authorisation. This legal restriction has led many business operators to use nominees to operate their businesses.

Similar to many other countries, nominee arrangements are illegal in Thailand. The FBA expressly prohibits foreigners from using Thai nationals to hold shares on their behalf in a way that enables them to own and operate reserved businesses under the law. Engaging in such arrangements (including conducting a business without the necessary license under the FBA) can result in severe penalties, including imprisonment, fines, and the forced dissolution of the business. The authorities, particularly the Ministry of Commerce and the Department of Special Investigation, continue to actively pursue cases involving suspected nominees.

The FBA categorises businesses into three lists, each outlining different levels of restrictions on foreign ownership and participation:

- a) **List 1:** Foreign business operators are strictly prohibited from engaging in any of the business activities on list 1, such as media outlets (newspapers, radio, and television), rice farming, forestry, extraction of Thai medicinal herbs, and land trading.
- b) **List 2:** Foreign business operators must obtain a foreign business license (FBL) from the Department of Business Development (DBD) and secure approval from the Thai cabinet to engage in a business activity on list 2. In addition, the company must be at least 40% Thai-owned (this may be reduced to 25% with special approval from the Minister of Commerce and the Cabinet), and at least two-fifths of the board of directors must be Thai nationals. This list covers business activities related to national security, such as arms trading and domestic aviation; businesses impacting arts, culture, traditions, and handicrafts; and businesses affecting natural resources or the environment.
- c) **List 3:** Foreign business operators wishing to engage in business activities on list 3 must obtain an FBL (albeit with lower approval requirements than for businesses under list 2) from the DBD, with approval from the interagency Foreign Business Committee. List 3 covers business activities in which Thai nationals are deemed not yet ready to compete with foreign businesses. The list also includes “other service businesses”—effectively a catch-all provision

that extends the scope of restricted activities and captures a wide range of service operations.

An FBL is not the only lawful and sustainable option for foreign businesses to pursue business operations in Thailand. The available options also include obtaining protection under specific treaties, such as the Treaty of Amity and Economic Relations between the United States and Thailand, or permission under the Investment Promotion Act, the Industrial Estate Authority of Thailand Act, or other laws. While these routes may seem complex at first, they offer secure options that can underpin long-term growth in business operations.

Given the recent increased focus on nominee arrangements, it is important for foreign business operators to carefully consider the business structures and ensure proper licensing and compliance with foreign ownership restrictions. By complying with the law and taking proper advantage of the various legal pathways available, foreign businesses can help give newly established Thailand operations a firm grounding for success.

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## Fintech Legal Update

### Thailand to Regulate Offshore Digital Asset Businesses

On April 12, 2025, Thailand issued an amended digital asset regulation that covers offshore digital asset businesses providing services on a cross-border basis to Thai users. These businesses will now be subject to the licensing requirements of the Royal Decree on Digital Asset Business Operations B.E. 2561 (2018), which is supervised by Thailand's Securities and Exchange Commission (SEC).

A digital asset business will be deemed as providing services in Thailand—and therefore subject to requirements under the Royal Decree on Digital Asset Business Operations—if the business does any of the following:

- a) Displays content in Thai, either fully or partially;
- b) Is registered under a “.th,” or “.ไทย” domain, contains any name relating to Thailand, or uses a domain written in Thai characters;
- c) Allows or requires payments in Thai baht (THB) or receives payments through Thai bank accounts or e-wallets;
- d) Chooses Thai law to govern transactions or Thai courts to litigate any dispute;
- e) Pays online search engines to attract users in Thailand to its services;
- f) Has an office, establishment, or personnel in Thailand to support or assist users within the country; or
- g) Meets any other criteria specified by the SEC.

To operate legally in Thailand, offshore operators meeting any of the above criteria will be required to incorporate a local company in Thailand in order to apply for a digital asset business license with the SEC.

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A faint, light-colored map of Southeast Asia is visible in the background, showing the outlines of Vietnam, Laos, Cambodia, Thailand, Malaysia, and Indonesia. The map is rendered in a low-poly, geometric style.

# VIETNAM

**TILLEKE & GIBBINS**

## Fintech Legal Update

### Vietnam Issues Fintech Sandbox Decree

On April 29, 2025, the government of Vietnam promulgated Decree No. 94/2025/ND-CP with regulations on a controlled “sandbox” for innovative fintech solutions in the banking sector (Decree 94). The decree aims to promote innovation, modernize banking, and enhance financial inclusion while assessing risks and benefits of fintech solutions in a controlled testing environment.

#### Fintech Sandbox

Currently, the fintech sandbox focuses on three specific areas:

- a) Credit scoring
- b) Open API data sharing
- c) Peer-to-peer (P2P) lending

Eligible participants for the fintech sandbox include:

- a) Credit institutions and foreign bank branches (except for P2P lending)
- b) Fintech companies operating in Vietnam

Cross-border supply by foreign providers is not included in the sandbox framework.

Eligible participants are permitted to provide fintech solutions only within the scope specified in the Certificate of Sandbox Participation issued by the State Bank of Vietnam in consultation with other ministries.

P2P lending companies face specific restrictions within the fintech sandbox, including prohibitions against:

- a) Providing security for customer loans
- b) Operating as a customer (i.e., P2P lender or borrower)
- c) Providing P2P lending solutions to pawn shops

The maximum sandbox period is two years, with the possibility of extension as permitted by law. The outcomes of the fintech sandbox will serve as a practical basis for authorities to develop and refine future fintech regulations.

It is worth noting that participation in the sandbox does not guarantee that participants will meet relevant business and investment conditions that may be stipulated in future regulations.

Decree 94 took effect on July 1, 2025.

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## Technology Legal Update

### Vietnam Issues Personal Data Protection Law

Vietnam's new Personal Data Protection Law (PDPL) was passed by the National Assembly on June 26, 2025, and will enter into force on January 1, 2026. The PDPL introduces several new concepts, exemptions, and obligations in comparison with the current Decree No. 13/2023/ND-CP on personal data protection (PDPD), while other contents remain essentially the same. The relationship between the PDPD and the PDPL has not been clearly addressed; however, it is expected that the government will issue a new decree providing necessary guidance on certain requirements under the PDPL, and the PDPD will remain in effect until it is replaced by this new decree.

Some key points of the new PDPL include the following:

- a) Personal data will be further defined by lists of basic personal data and sensitive personal data to be issued by the government.
- b) The consent-centric approach of the PDPD remains in place, along with additional exemptions for certain data processing activities.
- c) The requirements for the data processing impact assessment (DPIA) and transfer impact assessment (TIA) remain unchanged. However, there are new exemptions for the TIA, including for the processing and storing in the cloud of employee data, and when the data subject is the person sending its own data outside of Vietnam.
- d) Consent obtained under the PDPD remains valid under the PDPL. DPIAs and TIAs submitted under the PDPD are valid under the PDPL but may need to be updated to be in line with the requirements of the PDPL.
- e) Administrative fines depend on the type of violation. The fine for sale and purchase of personal data will be 10 times the revenue from the sale or VND 3 billion (about USD 115,000), whichever is higher. The fine for cross-border transfer violations is 5% of the violator's revenue of the preceding year or VND 3 billion, whichever is higher. Other violations are capped at VND 3 billion.
- f) Small enterprises and startups have a five-year grace period from the effective date of the PDPL to comply with regulations on preparing impact assessment dossiers and designating departments and personnel to protect personal data. Business households and micro-enterprises are exempted from these regulations. The exemptions and grace period, however, do not apply in cases where a large amount of personal data is processed, in the provision of data processing services, or in cases where sensitive personal data is directly processed.

### Outlook

The new PDPL, set to take effect on January 1, 2026, introduces new regulatory requirements as well as new exemptions compared to the current PDPD. Enterprises will need to proactively assess and implement compliance measures ahead of this effective date.

It is important to note that while the PDPL builds upon the PDPD, many of its provisions will require further clarification and guidance from the government. Therefore, businesses should closely monitor regulatory developments to stay informed and prepared.

Please see a more comprehensive analysis of the PDPL [here](#).

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## Aviation Legal Update

### Wider Skies: Vietnam Expands Aviation Market to More Aircraft Types

On April 13, 2025, the government of Vietnam issued Decree No. 89/2025/ND-CP to amend and supplement Decree No. 92/2016/ND-CP dated July 1, 2016, concerning conditional business lines within the civil aviation sector (“Decree 89”). This update was implemented through an expedited procedure with immediate effect and has drawn public attention as it broadens the types of aircraft eligible for import into Vietnam, thereby promising to inject greater diversity into the country’s aviation market.

#### What has changed?

Decree 89 expands the recognition of aircraft type certificates—documents ensuring that the design of the aircraft, aircraft engine, or propeller meet airworthiness standards—from two to seven foreign aviation authorities. While Vietnam previously only accepted type certificates from the U.S. Federal Aviation Administration (FAA) and the European Union Aviation Safety Agency (EASA), the country now further accepts type certificates issued by five additional foreign aviation authorities:

- a) National Civil Aviation Agency of Brazil (ANAC)
- b) Transport Canada Civil Aviation (TCCA)
- c) Federal Agency for Air Transport of the Russian Federation (Rosaviatsiya)
- d) U.K. Civil Aviation Authority (UK CAA)
- e) Civil Aviation Administration of China (CAAC)

Additionally, on April 14, 2025, Vietnam’s Ministry of Construction issued Circular No. 03/2025/TT-BXD (“Circular 03”) with immediate effect, amending and supplementing several articles under Circular No. 01/2011/TT-BGTVT previously issued by the Ministry of Transport (which was merged into the Ministry of Construction on March 1, 2025) in 2011 on the promulgation of the Civil Aviation Safety Regulations for aircraft and aircraft operations. Echoing Decree 89, Circular 03 allows the Civil Aviation Authority of Vietnam (CAAV) to issue or recognize Certificates of Airworthiness to aircraft that hold type certificates issued by the aviation authorities of Brazil, Canada, Russia, the United Kingdom, or China, in addition to those issued by the FAA or EASA.

Following the entry into force of Decree 89 and Circular 03, the first aircraft imported and approved for commercial flights under these expanded rules was a Chinese-made aircraft from the Commercial Aircraft Corporation of China, Ltd. (COMAC), holding a type certificate issued by the CAAC.

**Why the change?**

Decree 89 is expected to boost competition across the region and lower costs for Vietnamese airlines. This significant expansion appears to be driven by two main factors.

- a) Vietnam has ambitious plans to expand its aviation infrastructure to accommodate rising passenger numbers. Under Vietnam's near-term master plan for the development of national airports through 2030 and its long-term vision to 2050, the country aims to expand its airport network to 30 airports by 2030 (14 international and 16 domestic), up from the current total of 22. The long-term vision for 2050 includes further upgrades and development to increase annual passenger capacity by more than 80%. By recognizing more aircraft types from additional countries, Vietnam is providing local airlines with greater flexibility and more options when purchasing or leasing aircraft that are safe, cost-effective, and suited to their needs.
- b) Over the past three years, Vietnam has strengthened relationships with countries such as Brazil, Canada, Russia, the U.K., and China through high-level diplomatic and regulatory cooperation. Vietnam has hosted state-level visits or held meetings with leaders and envoys of these nations, fostering closer ties and paving the way for mutual recognition in civil aviation matters.

**What's next?**

Looking ahead, the government of Vietnam is taking further steps to support this growth in air travel. It is in the process of updating Decree No. 68/2015/ND-CP on registration of nationality and rights to aircraft to streamline aircraft registration and align with international standards under the Cape Town Convention and Protocol.

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