

RAJAH & TANN ASIA

LAWYERS WHO KNOW ASIA

REGIONAL ROUND-UP 2020: MALAYSIA



RAJAH & TANN ASIA

CAMBODIA | CHINA | INDONESIA | LAOS | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIETNAM

www.rajahtannasia.com

CONTENTS

Introduction	3
Looking Back: 2020	4
Gazing Into: 2021	8
Key Contacts	10
Our Regional Contacts	12
Disclaimer	13

Introduction



Throughout the year, we have been keeping you up to date on noteworthy developments across the region with our Regional Round-up Publications. As we enter 2021, we are pleased to share with you our inaugural year-in-review edition of the Regional Round-up for our Regional Offices in the Rajah & Tann Asia network.

In each jurisdiction, we recount the milestones in the path that has been travelled in 2020, as well as consider the terrain of the road that lies ahead in 2021. In the "Looking Back: 2020" section, we take stock of the past year and highlight the key legal and regulatory developments affecting each jurisdiction in 2020. In the "Gazing Into: 2021" section, we look ahead to some key areas of development that you should take note of in the year to come, referencing the legal and business trends shaping up potential legislative and regulatory changes in each jurisdiction.

We hope that this year-in-review edition of the Regional Round-up provide some perspective and insight into the legal landscape of the jurisdictions across the region. As always, please feel free to contact our lawyers in our Regional Offices if you have any queries or for further discussions.

Please click on the links below to access the full collection of our country-specific Regional Round-up 2020:

- [Cambodia](#)
- [China](#)
- [Indonesia](#)
- [Laos](#)
- [Malaysia](#)
- [Myanmar](#)
- [Philippines](#)
- [Singapore](#)
- [Thailand](#)
- [Vietnam](#)

Looking Back: 2020

*The year 2020 has brought about unprecedented challenges and changes to life as we know it. To meet these challenges, Malaysia, like many other economies, adopted measures to mitigate the economic and social impact of the **COVID-19 pandemic**. Such measures included the implementation of **Movement Control Orders ("MCOs")** to curb the spread of COVID-19 and the provision of financial assistance through an **economic stimulus package** to targeted individuals, small and medium enterprises and industries.*

*In this regard, the **Temporary Measures for Reducing the Impact of the Coronavirus Disease 2019 (COVID-19) Act 2020 ("COVID-19 Act")** came into force on 23 October 2020 (as summarised below). Further, several legislative*

*amendments and initiatives were implemented to address the changes and challenges brought about by the pandemic. These included the **extension of time for corporations to conduct their virtual annual general meetings**, proposed amendments to the **Insolvency Act 1967** to mitigate the financial ramifications of the pandemic, guidance on **compliance with personal data protection requirements** in relation to the collection, processing and storage of personal data by businesses during the MCO, and issuance of the **Malaysia Cyber Security Strategy 2020 – 2024**.*

*We also looked at creating awareness about the risks of corruption to companies in light of the coming into force of **Section 17A of the Malaysian Anti-Corruption Commission Act 2009** on 1 June 2020.*

Additionally, there have been key developments in areas such as trade, employment and renewable energy which include:

- *Malaysia becoming a **signatory to the Regional Comprehensive Economic Partnership ("RCEP") Agreement**, which is expected to lower trade barriers;*
- *the **expansion of coverage of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990** to cover all employees in addition to those employed to work on estates;*
- *case law development on what constitutes **sexual harassment**;*
- *case law development on when an employee's **fixed term contract** is, in reality, a **permanent contract**;*
- *the launch of the fourth competitive bidding process for the **development of up to***



1,000MWac of large scale solar power plants in Malaysia; and

- **the issuance of Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons.**

Summaries of the key developments relating to the above areas are set out below.

Temporary Measures for Reducing the Impact of the Coronavirus Disease 2019 (COVID-19) Act 2020

The COVID-19 Act 2020 came into force on 23 October 2020 to provide temporary relief for individuals and companies affected by the pandemic, and to reduce the impact of the resulting MCOs issued by the Government. In a nutshell, Part II of the COVID-19 Act provides temporary relief measures for any inability to perform certain contractual obligations, while Parts III to XVIII provide for modifications and amendments to certain Acts and Ordinances which are transient in nature.

Conduct of Virtual General Meetings during the Conditional Movement Control Order

With the announcement of the Conditional Movement Control Order ("CMCO") for the Malaysian states of Sabah, Selangor, and the Federal Territories of Kuala Lumpur and Putrajaya effective from 13 October 2020 until 27 October 2020, the Companies Commission of Malaysia ("CCM") granted a further extension of 90 days for a company to hold its annual general meeting, and to circulate and lodge financial statements with CCM. Consequently, the Securities Commission of Malaysia ("SC") has also revised the Guidance and FAQs on the Conduct of General Meetings for Listed Issuers to dovetail the regulation and conduct of general meetings for listed issuers during the CMCO. Click [here](#) for more information.

Amendment to Insolvency Act 1967 to Mitigate Financial Ramifications of COVID-19 and Provide Individuals with Additional Protection from Bankruptcy

On 25 August 2020 and thereafter on 22 September 2020, the Insolvency (Amendment) Bill 2020 ("Insolvency Bill") was passed by the *Dewan Rakyat* (House of Representatives) and *Dewan Negara* (Senate), respectively. The Insolvency Bill will come into force once it receives Royal Assent and is published in the Federal Gazette. This legislation is aimed at mitigating the financial ramifications of the pandemic and providing individuals with additional protection from the threat of bankruptcy, most significantly by increasing the minimum debt threshold for the presentation of a bankruptcy petition from RM50,000 to RM100,000. Click [here](#) for more information.

Corporate Liability is Not Shelved: Adequate Procedures More Crucial than Ever in the Face of Corruption and Fraud Risks

Section 17A of the Malaysian Anti-Corruption Commission Act 2009 attaches liability to a company where a person associated to it gives, offers, or promises gratification to third parties for the benefit or advantage of the company. This provision came into effect on 1 June 2020. Click [here](#) for more information.

Personal Data Protection Commissioner Issues Advisory on the Collection, Processing and Storage of Personal Data During the CMCO

Following the shift from the MCO to the CMCO in Malaysia, most industries and business were allowed to resume operations, subject to compliance with the standard operating procedures issued by the Government. On 29 May 2020, the Personal Data Protection Commissioner issued an Advisory on the Procedure for the Handling of Activities related to the Collection, Processing and Storage of Personal Data by Business Premises during the CMCO, which outlined the minimum requirements to be met by businesses operating during the CMCO. The aim was to ensure compliance with personal data protection principles under the Personal Data Protection Act 2010. Click [here](#) for more information.

Signing of the Regional Comprehensive Economic Partnership ("RCEP") Agreement

After several delays (since negotiations were first launched during the 21st ASEAN Summit in November 2012), the RCEP Agreement was signed by 15 countries in the Asia Pacific region, including Malaysia, on 15 November 2020. The RCEP Agreement embodies the initiative to economically integrate the 15 participating countries, which account for around 30% of the world's Gross Domestic Product and close to a third of the world's population, making the RCEP Agreement the world's largest trade deal to-date. It is hoped that once ratified according to each participating jurisdiction's requirements, the RCEP Agreement will mitigate the adverse effects of prolonged trade restrictions. Click [here](#) for more information.

Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 Revised to Expand Coverage to All Employees and to Impose Additional Requirements on Employers & Centralised Accommodation Providers

Until recently, employers were only required to comply with minimum standards of accommodation for employees employed to work on estates. However, the Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019 has expanded the coverage of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 to include all other employees in Peninsular Malaysia and the Federal Territory of Labuan. Click [here](#) for more information.

Sexual Harassment Also Includes Non-Physical Acts

The Industrial Court in its decision in *Loganathan Maniam v Murphy Sarawak Oil Co Ltd* [2020] 2 ILR 275 (Award No. 448 of 2020) highlighted that sexual harassment not only encompasses physical acts, but also includes non-physical acts such as the use of terms of endearment and the giving of personal gifts or attention, particularly where they are unwanted and go on repeatedly.

Permanent Employment – No Longer a Dream for Foreigners

The Federal Court, the apex court in Malaysia, delivered a ground-breaking decision in *Ahmad Zahri Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [2020] 1 LNS 494 confirming that it is possible for foreigners to gain permanent employment in Malaysia. The judgment dealt mainly with the question of whether an employee's fixed term contract is, in reality, a permanent contract. Click [here](#) for more information.

Large Scale Solar Power Plants: Fourth Competitive Bidding

On 28 and 29 May 2020, the Ministry of Energy and Natural Resources of Malaysia ("KeTSA"), along with the Energy Commission of Malaysia ("EC"), launched its fourth competitive bidding process (known as "LSS@MENtARI") for the development of up to 1,000MWac of large scale solar power plants in Malaysia, which will be connected to the electricity supply networks in Peninsular Malaysia. KeTSA has explicitly linked this initiative to the government's broader COVID-19 recovery efforts. Click [here](#) for more information.

Since then, EC has clarified that participation by foreign players will be permitted subject to certain conditions. Click [here](#) for more information.

Beneficial Ownership Reporting under the Companies Act 2016

On 1 March 2020, CCM issued the Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons ("BO Guidelines"). The BO Guidelines contain requirements for legal persons to, *inter alia*, obtain, keep, and hold up-to-date information of beneficial owners ("BOs") during a transitional period, and notify the Registrar of Companies on any BO information and its changes thereafter within 14 days after the expiry of this transitional period.

Further, CCM issued a Consultative Document on the proposed Companies (Amendment) Bill ("CA Bill") which sought to, among others, impose statutory obligations on a company (including to identify the BO), and statutory obligations on BOs to notify the company of their status as a BO and of changes in such status, failing which they commit an offence. While it is unclear what measures the Registrar can take against persons who are BOs but

reside outside Malaysia, CCM has announced that the transition period under the BO Guidelines will be extended from 31 December 2020 until the date when the CA Bill is passed and comes into force, during which CCM will conduct inspections to ensure all companies comply with the BO reporting requirements.

and capability building, awareness and education; and (v) strengthening global collaboration.

Personal Data Protection Department Publishes Investigation Paper on Misuse of Personal Data by Unlicensed Online Loan Providers

Following the receipt of multiple complaints from Malaysian individuals on the misuse of their personal data by unlicensed online loan providers in Malaysia, the Department of Personal Data Protection ("**PDPD**") had published media statements that relevant entities subject to investigation could be liable, on conviction to a fine of up to RM300,000 and/or a term of imprisonment of up to two years.

Thereafter, in December 2020, PDPD, in cooperation with the Malaysian Communications and Multimedia Commission ("**MCMC**") and the national cybersecurity agency, CyberSecurity Malaysia, started an investigation and published the "*Alert on Misuse of Personal Data by Unlicensed Online Loan Provider*", which indicates PDPD's efforts to ramp up enforcement of the Personal Data Protection Act 2010.

Malaysian Government Introduces the Malaysia Cyber Security Strategy 2020 – 2024

With the lack of specific cybersecurity legislation in Malaysia, the National Cyber Security Policy 2006 ("**NCSP**") plays an important role in mandating Malaysia's cybersecurity requirements. In October 2020, the Government launched the Malaysia Cyber Security Strategy 2020 – 2024 ("**MCSS**") which replaces the **NCSP**.

The MCSS provides protection of sectors identified as Critical National Information Infrastructure ("**CNII**"), as well as businesses, industries and citizens using five strategic pillars to improve Malaysia's cyber security management over the next five years. These pillars are: (i) ensuring effective governance and management; (ii) strengthening legislative framework and enforcement; (iii) catalysing world class innovation, technology, research and development, and industry; (iv) enhancing capacity

Gazing Into: 2021

As we progress into 2021, we expect to see developments in several areas of law including the following:

Insolvency (Amendment) Bill 2020

As mentioned above, we expect the financial protections afforded under the Insolvency Bill to come into force once it receives Royal Assent and is published in the Federal Gazette.

Companies (Amendment) Bill 2020

On 29 July 2020, CCM issued its consultative document on the proposed CA Bill which seeks to introduce measures to enhance provisions relating to corporate rescue mechanisms and BO framework. Such measures will, in part, alleviate the financial burdens faced by companies due to the pandemic and to address the need for long-term measures to support companies and mitigate risks of failure.

Industrial Relations (Amendment) Act 2020

The majority of the provisions of the Industrial Relations (Amendment) Act 2020 are expected to come into force on 1 January 2021, causing significant changes to Malaysian industrial relations laws. Among the key amendments are (i) the repeal of the Minister's power to refer representations on dismissal cases to the Industrial Court, which powers will now be given to the Director-General for Industrial Relations; and (ii) the option for a person who is dissatisfied with an Industrial Court award to appeal to the High Court, when previously the only redress was to file an application for judicial review with the High Court. Click [here](#) for more information.

Malaysian Space Board Bill 2020

In November 2020, the Minister of Science, Technology and Innovation ("**MOSTI**") tabled the Malaysian Space Board Bill 2020 ("**Bill**") for first reading by the Malaysian Parliament. The Bill aims to regulate the space industry in Malaysia. The second reading of the Bill, which was initially to be tabled in Parliament in December 2020, has been postponed to the next Parliament sitting in 2021.

Among others, the Bill seeks to:

- (i) establish a Malaysian Space Board to advise the Government on matters pertaining to the space industry in Malaysia;
- (ii) establish a licensing regime for the space industry as well as registration of space objects; and



- (iii) provide for certain space-related offences, and related matters (e.g. placing, installing, launching, or operating any weapon of mass destruction, or conducting any activity which affects the security or safety in space, etc.).

The explanatory statement of the Bill stipulates that the proposed Act is to be read together with other written laws, and shall be in addition to, and not in derogation of, other written laws.

MCMC Issues Public Consultation Paper on the Implementation of Fixed Number Portability in Malaysia

In December 2020, MCMC issued the Public Consultation Paper on the Implementation of Fixed Number Portability ("**FNP Public Consultation Paper**").

Fixed Number Portability ("**FNP**") is a process by which customers may keep their fixed telephone number when changing either their service provider, service and/or location (or any subset thereof). The implementation of FNP is intended to remove barriers to customer choice and switching of services, thereby facilitating more effective competition in the fixed telephony market.

The key questions that MCMC is seeking input on include: (i) the most appropriate and effective FNP services and technical solutions for the implementation of FNP; (ii) how the FNP process should be administered; and (iii) how the implementation of FNP can be expedited in a way that would be both simple and inexpensive for consumers and service providers.

The public consultation closes on 1 March 2021.

KEY CONTACTS



Yon See Ting
Managing Partner

T +603 2273 1919

see.ting.yon@christopherleeong.com



Lee Hock Chye
Partner

T +603 2273 1919

hock.chye.lee@christopherleeong.com



Christopher Lee
Partner

T +603 2267 2672

christopher.lee@christopherleeong.com



John Mathew
Partner

T +603 2273 1919

john.mathew@christopherleeong.com



Yau Yee Ming
Partner

T +601 7362 3459

yee.ming.yau@christopherleeong.com



Lim Hui Ming
Partner

T +603 2273 1919

hui.ming.lim@christopherleeong.com



Kuok Yew Chen
Partner

T +603 2272 1919

yew.chen.kuok@christopherleeong.com



Deepak Pillai
Partner

T +603 2273 1919

deepak.pillai@christopherleeong.com



Sri Sarguna Raj
Partner

T +603 273 1919

sri.sarguna.raj@christopherleeong.com

OUR REGIONAL CONTACTS

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +951 9345 343 / +951 9345 346
F +951 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79/ +632 8894 4931 to 32
/ +632 8552-1977 to 78
F +632 552 1978
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This publication is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this publication.

DISCLAIMER

The contents of this publication are owned by Rajah & Tann Asia and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this publication may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this publication is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation.