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# REGIONAL ROUND-UP 2020: PHILIPPINES



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# 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](#)
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## Looking Back: 2020

To optimise the efforts in responding against the health and economic costs posed by the **COVID-19 pandemic**, the Philippine government enacted laws and regulations to facilitate regulatory relief measures to the most affected sectors of the country. These measures included: (i) the liberalisation of the grant of incentives for the manufacture and importation of critical equipment, including exemption from import duties, taxes, and other fees; (ii) the adoption of measures to facilitate and minimise the disruption of national end-to-end supply chain to ensure the availability of medicines; (iii) various directives to government agencies to provide relief such as waiver of fees and extensions of deadlines; and (iv) movement and travel restrictions to minimise the transmission of COVID-19 in communities.



Majority of government offices also shifted to **electronic and online platforms** for processing permits and licenses, and allowed online or electronic payments of fees to ensure that government services continued while maintaining the safety of concerned stakeholders.

Significant amendments were also introduced by the Philippine Supreme Court ("**SC**") in the conduct of **court litigation** and processes in the country.

Other key areas with important developments include:

- promulgation of the 2020 Revised Rules of Procedure for **Intellectual Property ("IP")** Rights Cases;
- tax regulations on **voluntary assessment and payment program ("VAPP")** and **transfer price auditing**; and
- introduction of **sustainable financing framework**.

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

### **Bayanihan Acts 1 and 2: COVID-19 Response and Recovery Interventions**

In 2020, *Bayanihan* Acts 1 and 2 were passed to enhance the capacity of the Philippine government to address the immediate healthcare concerns and economic challenges brought by the COVID-19 pandemic. In line with the *Bayanihan* laws, government agencies have also released regulations to provide assistance and to ensure the continuation of processes during this time. Click [here](#) and [here](#) for more information on the *Bayanihan* laws.

## SC Amends Rules on Civil Procedure and the Revised Rules on Evidence

On 1 May 2020, two administrative matters issued by the SC took effect, which amended the 1997 Rules of Civil Procedure and the 1989 Revised Rules on Evidence. These substantially modify the way that court litigation and dispute resolution have traditionally been conducted in the Philippines. Click [here](#) for more information.

## Revised Rules for Intellectual Property Rights Cases and Guidelines on the Conduct of Videoconferencing

In 2020, the SC also promulgated the 2020 Revised Rules of Procedure for IP Rights Cases to expedite disputes in the IP rights industry and to incorporate amendments in the Rules of Civil Procedure and the Revised Rules of Evidence. Key amendments to the 2020 Revised Rules of Procedure for IP Rights Cases include the increase in the designated special commercial courts and the expansion of materials which will be accepted as evidence in trademark infringement and unfair competition cases.

The SC also issued guidelines on the conduct of videoconferencing, as an alternative to in-court proceedings, which took effect on 16 January 2021.

## Anti-Red Tape Authority Releases Guidelines on the Issuance of Permits and Licenses under the "New Normal"

On 27 August 2020, the Anti-Red Tape Authority issued Memorandum Circular No. 2020-06 to streamline the standards, measures, and procedures to be adopted by the various government agencies and local government units during the "New Normal".

Some of the guidelines under this issuance include the reduction of requirements for permits, licenses, and authorisations, where covered agencies are encouraged to remove unnecessary processes and procedures. The covered agencies are also now required to set up an online processing system for accepting applications for permits, licenses and clearances and payment gateways to process digital payments. Electronic versions of these documents and electronic signatures will also be recognised with the same level of authority as that of a signed hard copy. Click [here](#) for more information.

## Tax Regulations: Voluntary Assessment and Payment Program, Transfer Price Auditing, Reduced Rate on Inter-company Dividends

The Bureau of Internal Revenue ("BIR") introduced new regulations for the benefit of taxpayers. Delinquent taxpayers or those who have paid taxes erroneously may avail of the benefits of the VAPP, which includes immunity from audit and investigation, until 30 June 2021. BIR also prescribed [guidelines](#) to implement the reduced rate of 15% inter-company dividends to be paid by a domestic corporation to a non-resident foreign corporation pursuant to the National Internal Revenue Code of 1997, as amended, and the Ease of Doing Business and Efficient Government Service Delivery Act of 2018.

BIR also issued regulations to institutionalise transfer price auditing in the country so that it can verify related party transactions. Click [here](#) for more information.

## Bangko Sentral ng Pilipinas Launched Sustainable Finance Framework

Through the issuance of Bangko Sentral ng Pilipinas ("BSP") Circular No. 1085, BSP approved the Sustainable Finance Framework which laid out the integration of sustainability principles, including those covering environmental and social risk areas, for the banking industry in the country. Banks are required to comply with the Sustainable Finance Framework within three years from 16 May 2020, when BSP Circular No. 1085 took effect. Click [here](#) for more information.



## Gazing Into: 2021

Towards the end of 2020, the Philippine Congress passed the proposed Corporate Recovery and Tax Incentives for Enterprises ("**CREATE**") Act which aims to provide **tax relief and incentives to corporations**, and stimulate **investments** in the country. It is hoped that this will spur investments in the country in 2021.

The House of Representatives ("**HoR**") have also passed bills on the liberalisation of foreign investments. These bills aim to amend the old Retail Trade Liberalization Act and Public Services Act to adapt to the changing landscape and encourage **foreign investments** in the Philippines.



In addition, the following key trends and/or developments are to be noted:

- issuance of regular **contractors' licences** to foreign-owned contractors;
- strengthening **E-commerce** in the country through the proposed Internet Transactions Act and the establishment of an Electronic Commerce Bureau;
- imposition of Value-Added Tax ("**VAT**") on **Digital Transactions**;
- improving **internet services** through the proposed "Better Internet Act"; and
- implementation of the **2020 Investment Priorities Plan**.

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

### Tax Reforms: CREATE Act

On 26 November 2020, the Senate approved on third and final reading Senate Bill No. 1357 or the CREATE Act. According to the Department of Finance, CREATE Act is the first revenue-eroding tax reform package and the largest fiscal stimulus program for enterprises in Philippine history.

Key reforms and incentives of the CREATE Act include: (i) a flat rate of 25% corporate income tax for both domestic and foreign corporations, retroactive to 1 July 2020; (ii) repeal of the improperly accumulated earnings tax; (iii) reduction of the minimum corporate income tax and percentage tax from 3% to 1% (which will revert back to 3% after three years from 1 July 2020); (iv) tax exemption of foreign-sourced dividends of domestic corporations subject to certain conditions; (v) income tax holiday for four to seven years and 5% gross income tax or enhanced deductions for 10 years for newly-registered businesses; and (iv) availment of special corporate income tax rate and tax incentives of up to a maximum 17 years.

## Liberalization of Foreign Investments

HoR, the lower house of the Philippine Congress, passed bills in 2020 which aim to ease the entry of foreign investments in the Philippines.

House Bill No. 59 seeks to amend the Retail Trade Liberalization Act of 2000 by lowering the required minimum paid-up capital for foreign retail investors to USD 200,000 (around Php 10 million) from the original amount of USD 2.5 million (around Php 120 million).

House Bill No. 78 provides for a distinction between the definitions of "public service" and "public utility" under the Public Services Act, thereby allowing full foreign ownership of enterprises in certain industries in the Philippines which were previously restricted to Filipino citizens only. Senate Bill No. 13, which is currently pending with the Senate, the upper house of the Philippine Congress, also seeks to amend the Public Services Act for the same purpose.

## Supreme Court Strikes Down Philippine Ownership Requirement for Regular Licenses for Construction Contracting

On 10 March 2020, the Philippine Supreme Court En Banc ("**SC En Banc**") promulgated its decision in *Philippine Contractors Accreditation Board vs. Manila Water Company Inc.* (G.R. No. 217590). That decision nullified Rule III, Sections 3.1(a), 3.1(b)(bb) and 12.7 of the Philippine Contractors Accreditation Board's Revised Implementing Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines which had limited the issuance of regular contractors' licenses to Filipino citizens and corporations with at least 60% Filipino equity ownership.

The SC En Banc's decision has attained finality, but if it were to become final then it would have removed the impediment against foreign participation in the domestic construction industry. Click [here](#) for more information.

## Internet Transactions Act to Strengthen E-Commerce in the Philippines

On 24 November 2020, HoR passed House Bill No. 7805 or the Internet Transactions Act which sought to create the Electronic Commerce Bureau to regulate e-commerce activities in the country. These activities include internet retail of consumer goods and services,

online travel services, online media providers, ride hailing services, and digital financial services. The Internet Transactions Act also introduced the establishment of an online dispute platform. Click [here](#) for more information.

## House Panel Approves Bill Imposing 12% VAT on Digital Transactions

The HoR Committee on Ways and Means approved the Substitute Bill to House Bills No. 6765, 6944, 4531, and House Resolution No. 685, which aim to impose VAT on digital services. Digital service refers to any service that is delivered or subscribed over the internet or other electronic network which cannot be obtained without the use of information technology. Click [here](#) for more information.

## Senate Introduces the "Better Internet Act"

The Senate Committee on Public Services approved Senate Bill No. 1831 or the proposed "Better Internet Act" which aims to improve internet services in the country. Key features of Senate Bill No. 1831 include: (i) requiring internet service providers ("**ISPs**") to expand service coverage of fixed and mobile internet to unserved and underserved areas in the Philippines within three years from the date the law comes into operation; (ii) imposing minimum speed thresholds for the services to be delivered by telecommunication companies and ISPs; and (iii) penalising false advertisements on internet speeds.

## 2020 Investments Priorities Plan

President Rodrigo R. Duterte, through the issuance of Memorandum Order No. 50, approved the 2020 Investments Priorities Plan ("**2020 IPP**") which enumerates the country's priority economic activities that will qualify for fiscal incentives until 2023. The 2020 IPP added as part of its scope the projects related to addressing the COVID-19 pandemic and creating jobs in the provinces. The Board of Investments has yet to issue guidelines to implement the 2020 IPP.

## KEY CONTACTS



**Ben Dominic R. Yap**  
Managing Partner

T +632 8894 0377

[bdryap@cagatlaw.com](mailto:bdryap@cagatlaw.com)

### Corporate and Commercial



**Jaime Renato B. Gatmaytan**  
Partner

T +632 8894 0377

[jrbgatmaytan@cagatlaw.com](mailto:jrbgatmaytan@cagatlaw.com)



**Norma Margarita B. Patacsil**  
Partner

T +632 8894 0377

[nmbpatacsil@cagatlaw.com](mailto:nmbpatacsil@cagatlaw.com)

### Dispute Resolution



**Jesus Paolo U. Protacio**  
Partner

T +632 8894 0377

[jpuprotacio@cagatlaw.com](mailto:jpuprotacio@cagatlaw.com)



**Jess Raymund M. Lopez**  
Partner

T +632 8894 0377

[jrmlopez@cagatlaw.com](mailto:jrmlopez@cagatlaw.com)

### Labor and Employment



**Cesar E. Santamaria, Jr.**  
Partner

T +632 8894 0377

[cesantamaria@cagatlaw.com](mailto:cesantamaria@cagatlaw.com)



**Vladi Miguel S. Lazaro**  
Partner

T +632 8894 0377

[vmslazaro@cagatlaw.com](mailto:vmslazaro@cagatlaw.com)



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**Tax**

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**Anthony Mark A. Gutierrez**  
Partner

T +632 8894 0377

[amgutierrez@cagatlaw.com](mailto:amgutierrez@cagatlaw.com)



**Roxanne B. Tadique-Fajardo**  
Partner

T +632 8894 0377

[rein.tadique@cagatlaw.com](mailto:rein.tadique@cagatlaw.com)

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**Technology, Media and Telecommunications**

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**Mary Thel. T. Munding**  
Partner

T +632 8894 0377

[thel.munding@cagatlaw.com](mailto:thel.munding@cagatlaw.com)



**Deborah Miriam Sobrepeña-Lacson**  
Partner

T +632 8894 0377

[deb.sobrepena@cagatlaw.com](mailto:deb.sobrepena@cagatlaw.com)

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# 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

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