



## Southeast Asia – looking ahead into 2021

January 2021

Happy new year!

We trust that you, your family, and friends were able to find some time to enjoy the festive period and took some time to reflect on what has been a challenging year.

### **Introduction and economic outlook for the region**

As we turn our attention to 2021, here at Hogan Lovells we are buoyed by prospects of a steadier economic climate for the year ahead. Many Southeast Asian countries have adopted a strict new norm in response to the COVID-19 pandemic and with it the markets and economies have stabilized. The news of global vaccine approvals and its subsequent roll-out in the first half of the year looks set to bolster business.

We see the following topics making an impact on doing business in Southeast Asia this year.

### **Strengthening trade**

#### **Regional Comprehensive Economic Partnership on Trade**

After eight years of negotiation, the Regional Comprehensive Economic Partnership on Trade (RCEP), the world's largest regional trade agreement, was signed in an online ceremony on 15 November 2020. The trade deal lowers tariffs, expands services trade, harmonizes rules of origin, and promotes regional trade.

Together with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), we foresee strong positive growth in intra-Asia and intra-regional trade. The re-positioning of global and regional supply chains and the resumption of regional growth, possibly ahead of our counterparts in Europe and the Americas all point to a positive 2021 for South East Asia.

To read more, click [here](#). To see how we can support you in the Asia Pacific region, click [here](#).

## Progressing the ASEAN grid

A trial will see Singapore import electricity from Peninsular Malaysia in preparation to further connect to the regional power grid<sup>1</sup>. The trial, announced in late October 2020, will see Singapore import 100 megawatts (MW) of electricity from Malaysia for two years. This will make up about 1.5 percent of Singapore's peak electricity demand.

This trial comes after the recent signing of the memorandum on the Laos-Thailand-Malaysia-Singapore Power Integration Project (LTMS-PIP) in November 2020 which allows for greater connectivity among members of ASEAN by advancing cooperation on cross-border power trading<sup>2</sup>. The LTMS-PIP is viewed as a pathfinder to complement existing efforts towards realising the ASEAN Power Grid and the ASEAN Economic Community, by creating opportunities for multilateral electricity trading in the region<sup>3</sup>.

## Growing foreign investment

### Vietnam's Law on Investment 2020

Vietnam's new Law on Investment 2020 (Amended LOI) took effect on 1 January 2021. The Amended LOI seeks to further attract foreign investment into Vietnam, and introduced the following changes to the previous law:

#### "Foreign investor" threshold lowered to 50 percent

Previously, enterprises incorporated in Vietnam with 51 percent or more foreign-owned capital were treated as "foreign investors" for purposes of licensing and investment activities. The Amended LOI lowers the "foreign investor" threshold from 51 percent to 50 percent meaning it is no longer possible for one or more foreign investors to hold a majority stake in a Vietnamese subsidiary while preserving its domestic investor treatment for licensing and investment activities.

#### Threat to nominee arrangements

Foreign investors have often used nominee arrangements to circumvent restrictions on foreign ownership in "conditional" business sectors such as retail and education. The Amended LOI may signal an intention to crack down on such arrangements, as it makes investing through a "sham" transaction (such as use of a nominee to mask the true beneficial ownership) a basis for terminating an investment project.

#### Simplified licensing procedure for acquisitions that do not increase foreign ownership

Previously, foreign investors who subscribe for or acquire 51 percent or more of the equity in a company, or any amount of equity in a company that operates within a conditional business sector, were required to carry out a registration procedure with the local Department of Planning and Investment colloquially known as an "M&A Approval". The Amended LOI removes the M&A Approval requirement so long as the overall foreign ownership of the target company is not increasing and the target company does not hold land use rights in certain strategically important areas. The pre-completion licensing and approval process will therefore be both shorter and simpler in cases where there is no increase in the overall foreign ownership of the target company, or where the overall foreign ownership remains below 50 percent and the target company is not engaged in business lines that are conditional to foreign investment.

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<sup>1</sup> <https://www.channelnewsasia.com/news/singapore/singapore-importing-electricity-malaysia-power-energy-13775308>

Read more on how the Amended LOI will impact foreign businesses doing business in Vietnam [here](#).

## Indonesia's Omnibus Law

### The law

On 2 November 2020 Indonesian government passed the Law No. 11 of 2020 on Job Creation (Omnibus Law), a phenomenal 1,187 pages piece of legislation that is amending 81 existing laws to promote economic recovery and catalyse job creation for the young and productive population in the country. The legislation is aimed at encouraging foreign and domestic investment and making it easier for business to start by streamlining the licensing process.

### Sovereign wealth fund

There are 46 implementing regulations being prepared by the Government of Indonesia to implement the Omnibus Law. Some of the implementing regulations are aimed to establish a sovereign wealth fund (SWF) and have been passed in December 2020.<sup>4</sup> The objective is to catalyse foreign investment into Indonesia; the SWF will have an active function in partnering with foreign and domestic investors for developing infrastructures and new metropolitans within Indonesian vast geography. In anticipation of its launch this year, the United States (U.S.) and Japan have pledged US\$2 billion and US\$4 billion respectively to the SWF.<sup>5</sup>

### Investment priority list

This month, the government is finalizing a Presidential Regulation on Investment which will amend the current negative investment list and make most of the line of businesses in Indonesia fully open for foreign and domestic investment. The latest circulating draft only contains 48 line of businesses which have foreign ownership restriction – compared to that of 350 line of businesses in the current negative investment list.

Nevertheless, the obligation to form a limited liability company for foreign investment (except for several business sectors) and the minimum investment requirements remain.

## Technological advancements

### Data centre boom

The COVID-19 pandemic has accelerated many of the technological shifts that were already underway prior to the crisis, and pushed almost every major organization towards a path to digital transformation. The increasing adoption of cloud services, 5G and the Internet of Things (IoT) technologies has in turn generated a growing demand for data centres.

The APAC region is set to be the biggest market for data centres by 2021, with a total market size of around US\$28 billion by 2024. Southeast Asia is a key player in the region, representing around 13 percent of the region's total market size<sup>6</sup>.

Within Southeast Asia, Singapore has traditionally been the epicentre for public cloud players with new cloud services or regions typically being established in the nation-state first. With Amazon Web Services (AWS), Google Cloud Platform (GCP), Facebook, and Alibaba Cloud present and expanding their data centre infrastructure in the country, Singapore is one of the most mature data centres markets in the world.<sup>7</sup>

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<sup>4</sup> <https://go.kompas.com/read/2020/12/17/223425874/jokowi-signs-government-regulation-on-indonesian-sovereign-wealth-fund> and <https://www.reuters.com/article/indonesia-swf/indonesia-paves-way-for-2021-launch-of-sovereign-wealth-fund-idUKL4N2IW2M6>

<sup>5</sup> <https://jakartaglobe.id/business/japan-pledges-4b-to-indonesias-sovereign-wealth-fund>

<sup>6</sup> <https://datacenternews.asia/story/why-southeast-asia-is-at-the-forefront-of-a-new-wave-of-sustainable-data-centers>

<sup>7</sup> <https://www.eastspring.com/insights/asian-tech-5-key-trends-for-the-future>

## **Indonesian personal data protection law**

At the same time in Indonesia, the COVID-19 pandemic poses an unprecedented challenge to public health and economic stability. Indonesia went into various degrees of lockdown which interrupted business and everyday life on every level.

Activities in digital economy during COVID-19 pandemic is surging and accordingly it is necessary to protect the personal data. However, the existing laws and regulations in Indonesia that governs the protection of personal data are still sectoral in nature and there are no regulations at law level that carries criminal sanctions.

Realizing the importance of personal data protection, Indonesia appears ready to enact a new law on the protection of personal data. The presidential office has proposed a Bill on Personal Data Protection (PDP Bill) and is now being discussed with the members of House of Representatives. The PDP Bill in general follows the standards set out in the GDPR, which in the near future is expected to solve problems related to the protection of personal data in Indonesia. We understand that the House of Representative is prioritizing the discussion of the PDP Bill and following such discussion, it is expected that it will be passed into law within this year.

## **Closing**

We are confident of a bright and steadier 2021 ahead with the promises of strengthening political ties and trade partnerships within the region and the rest of the world, potential growth in foreign investments in Vietnam and Indonesia, and overall an increasing interest in the Southeast Asia with technological advancements that will see an uptake in various sectors.

If you would like to know more about how we can support you, please do not hesitate to contact us.

On behalf of our offices in the region, we wish you all the best for the year ahead and may 2021 bring you great success.

## **About our Southeast Asia offering**

For over two decades, Hogan Lovells has advised clients in Southeast Asia, tracking the region's development to become one of the largest and most influential collective economies in the world.

Our offices in Singapore, Hanoi, Ho Chi Minh City, and Jakarta\*, led by Office Managing Partners (OMPs) Alex Wong, Jeff Olson, and Chalid Heyder, work together as one team to provide our clients with both local and international advice on a variety of legal matters.

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## Get to know our OMPs



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Chalid Heyder, OMP of Jakarta office, is recognized as one of the top litigation and arbitration experts in Indonesia with decades of experience in dispute resolution and recognized by *Chambers Asia Pacific: Indonesia 2021* for Dispute Resolution. He has represented and advised both domestic and international clients across various industries and has extensive experience in restructuring, bankruptcy and insolvency; business competition; contentious employment issues; internal investigations, as well as criminal and corruption matters.



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Jeff Olson is the OMP of Ho Chi Minh City and Hanoi offices and heads the corporate practice. With more than 15 years of experience acting for private equity and funds firms, venture capital investors, and corporations of all shapes and sizes, Jeff represents strategic and financial investors on complex multi-jurisdictional merger and acquisition and joint venture transactions across the region and in Asia.



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With two decades worth of experience in Singapore and the Asia Pacific, Singapore Office Managing Partner, Alex Wong is highly regarded as a leading energy, infrastructure, and construction practitioner in the region. He is widely praised for his responsiveness, work-ethic and in-depth knowledge of energy and infrastructure transactions across the Asia Pacific. Alex leads a number of sustainability and environmental initiatives from Singapore and is particularly well known for his work in the water and renewable energy sectors. He brings a cross-cultural understanding to working the most complex deals in the region.

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