

APAC Corporate secretarial newsletter

Issue 2/2024

July 2024

forvis mazars

As businesses expand their operations into new countries, it brings a wealth of opportunities but also creates compliance risks.

With its economies driving global growth, Asia Pacific (APAC) is an inviting region for multinational corporations seeking expansion.

Each jurisdiction in the region has its own rules and regulations so getting compliance right is a challenge faced by businesses of all sizes. To minimize these challenges, our APAC corporate secretarial newsletter provides information on how to ensure compliance on an international scale and helps businesses gain comprehensive insights into the business landscape across APAC.

Corporate secretarial annual assurance package

In managing corporate secretarial compliance across multiple countries, you will face different filing formats, deadlines, and reporting requirements. It can also be problematic and inefficient using multiple local providers and hiring specialists in country.

How can we help you?

Forvis Mazars offers a comprehensive corporate secretarial annual assurance package that is seamless and efficient. By centralizing your company secretarial services with one experienced firm, you retain greater control over the various regulations required to comply across multiple countries. We have a consistent package which covers the mandatory filings in each country with a retainer offering a discount on one-off services required when you have a corporate action that gives rise to a filing.

For more information, please visit our Global Corporate Secretarial Services.



Justin Lim
Partner, Head of Outsourcing in Singapore and APAC Head of Corporate Secretarial



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Australia
Key updates



Australian Securities and Investment Commission (ASIC) prosecutes a director without ID

ASIC has begun the first prosecution of a director for failing to comply with the obligation to have a director identification number.

A director appeared in Downing Centre Local Court and was formally charged with one count of contravening section 1272C(1) of the Corporations Act 2001 by failing to have a director ID. The court granted an interim nonpublication order prohibiting the defendant's identity. The charges were listed for a further mention in April.

Directors are required by law to verify their identity with Australian Business Registry Services before receiving a director ID. They must apply for their IDs within the following timeframes:

- Directors appointed before 1 November 2021 had until 30 November 2022 to apply
- New directors appointed for the first time between 1 November 2021 and 4 April 2022 had 28 days from their appointment to apply, and
- From 5 April 2022, intending new directors had to apply before being appointed.

The maximum penalty for an offence against section 1272C(1) of the act is 60 penalty units. The defendant in this matter is facing a maximum penalty of $13,320.

Australian Securities Exchange (ASX) releases draft of new governance principles

The ASX Corporate Governance Council has released for comment a draft fifth edition of its *Principles and Recommendations*.

The new edition retains eight fundamental principles with refinements in expression, and includes 33 general recommendations alongside seven additional ones applicable in specific circumstances.

Among key updates are provisions related to board skills and diversity disclosure, stakeholder engagement practices, non-executive directors' remuneration structures, and provisions for clawing back performance-based executive pay.

The proposed fifth edition includes emphasised disclosure regarding code-of-conduct breaches and verification processes for periodic reports, along with assessing and disclosing material and ESG risks.

Stakeholders are invited to provide feedback on the proposed changes before 6 May. The fifth edition is slated for release in early 2025, potentially taking effect for financial years beginning on or after 1 July 2025.

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China
Key updates

A comprehensive set of policy measures in Shanghai is implemented to lighten the burden of SMEs

Reductions on taxes and fees

Fully and sequentially implement the preferential policies for reducing taxes and fees, mainly include:

- VAT credit carry forward refunds
- Weighted VAT Deduction for Advanced Manufacturing Enterprises
- Raising the Proportion of Weighted Pretax Deduction of the R & D Expenses
- 50% cost reduction on "Six taxes, Two fees" for small-scale VAT taxpayers, small-profit enterprises, and individual households

Reductions on Enterprises' labour costs

- Reduce the employers' contribution to the basic medical insurance for employees by 1%, from 10% to 9%, from March 2024 to February 2025.
- The unemployment insurance rate will be maintained at 1%, with both the employer and employee contributing 0.5% each, continuing the reduced rate from May 2023 to December 2024.

Refund unemployment fund

To provide financial relief and support for job stability:

- A refund of up to 60% of the unemployment fund paid in 2023 for SMEs.
- For large enterprises, a refund up to 30% of the unemployment fund paid in 2023.

Conditions of SMEs

An enterprise shall meet all the following criteria to be classified as SMEs:

- Enterprises engaging in non-restricted and non-prohibited businesses
- Annual taxable income amount does not exceed CNY 3M
- Headcount does not exceed 300 employees
- Total assets do not exceed CNY 50M

Reference:

- Shanghai Municipal People's Government, HuFuBanGui[2024] No.4: Notice on issuing several policy measures in Shanghai to lighten the burden of SMEs (link here in Chinese)

Measures to further optimize the management of foreign exchange business were announced

Optimizing the registration management of the list

Enterprises engaged in foreign exchange receipts and payments for goods trade shall register before handling their first receipts and payments.

Currently, SAFE manages the list of "Register of Enterprises for Foreign Exchange Receipts and Payments for Trade", and shares this list with domestic banks.

Going forward, this list will be handled by domestic banks directly.

Increasing the standard for special refund of goods trade

SAFE shall implement registration and management of special refund for goods trade of Class A enterprises in the list with an equivalent value exceeding USD 50,000 (non-original refunds or refunds with a time interval exceeding 180 days).

The standard for special refund of goods trade of Class A enterprises exempted from registration will be increased from USD 50,000 to USD 200,000. This policy will be implemented from 1 June 2024.

Points of attention

- Small and micro cross-border ecommerce enterprises are exempted from this registration requirement when handling foreign exchange transactions in goods trade based on electronic transaction information.
- Enterprises shall apply for the changes at domestic banks within 30 days from the date of any changes in basic information, such as company name, registered address, etc.

Reference:

- State Administration of Foreign Exchange, Hui Fa [2024] No.11: Notice on Further Optimizing the Management of Trade Foreign Exchange Business (link here in Chinese)

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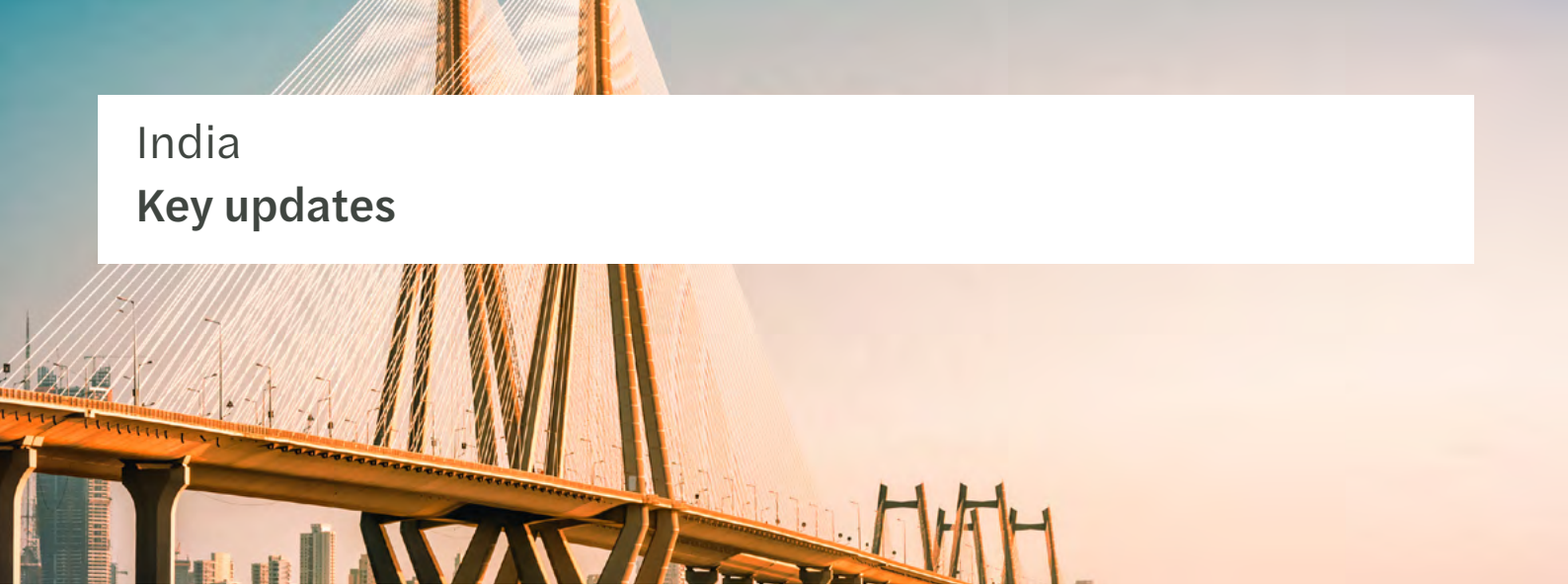


Hong Kong
Key updates

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India
Key updates

Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024

The Ministry of Corporate Affairs (MCA) issued a notification dated 24 January 2024 regarding the Companies (Listing of Equity Shares in Permissible Jurisdictions), 2024, effective from 24 January 2024.

This rule provides guidelines for Indian public companies to list their equity shares on approved foreign stock exchanges, including the International Financial Services Centre (IFSC). The rules specify the India International Exchange and NSE International Exchange as permitted platforms for such listings. Moreover, the MCA has identified certain entities that are not eligible under these regulations, which include Nidhi companies and companies limited by guarantee.

Significance

This marks a significant policy shift, allowing public Indian companies to issue and list their shares on permitted international exchanges.

It is expected that these regulations will make cross-border listings easier, giving businesses access to a wider range of financial markets and better choices for foreign investment. The anticipated benefits are substantial, ranging from improved valuation aligned with global standards to heightened foreign investment inflows and the unlocking of new growth opportunities.

Establishment of Central Processing Centre (CPC)

The Ministry of Corporate Affairs (MCA) issued a notification dated 2 February 2024 regarding the establishment of a Central Processing Centre (CPC).

Commencing operations on 6 February 2024, the CPC will initially process 12 forms and applications, with plans to expand its scope to include additional forms from 1 April 2024.

Significance

The establishment of the CPC, along with the Central Registration Centre (CRC), will expedite the processing of applications and forms related to incorporation, closure, and regulatory compliance. By facilitating easier company incorporation, closure, capital alteration, and compliance fulfilment under corporate laws, these centralised processing centres will contribute to enhancing the business environment. Faster processing of forms may be expected.

Companies (Registration Offices and Fees) Amendment Rules, 2024

The Ministry of Corporate Affairs (MCA) has introduced the Companies (Registration Offices and Fees) Amendment Rules, 2024.

The amendment rules, effective from 16 February 2024, introduce Rule 10A, which delineates the responsibilities and jurisdiction of the Registrar of the Central Processing Centre (CPC). This role entails the examination and decision-making process concerning various applications, e-Forms, and documents mandated by the Companies Act, 2013.t

Significance

This may be expected to contribute towards a conducive environment for business growth and innovation, basically a better regulatory environment.

The CPC does not replace the Registrar's authority under Section 399 of the Companies Act. The Registrar retains territorial jurisdiction and can exercise specific powers as needed. The amendment currently applies to only a specific set of filings.

Processing of applications at the CRC and C-PACE also does not require any physical interaction with stakeholders. However, it is important to note that the jurisdictional Registrar, apart from the CPC Registrar, will retain authority over companies for all other provisions of the Companies Act, 2013, and its associated regulations, if the registered office of the company falls within their jurisdiction.

Deployment and usage of Change Request Form (CRF) on MCA-21 – reg

The Ministry of Corporate Affairs (MCA) issued a circular dated 19 February 2024 regarding the Deployment and usage of Change Request Form (CRF) on MCA-21 – reg.

Stakeholders are informed that Change Request Form (CRF) has been made available on V3 portal for the convenience of users of MCA-21 services.

This web-based Form is to be used only under exceptional circumstances, for making a request to Registrar of Companies (ROC), for the purposes which cannot be catered through any existing form or services or functionality available either at Front Office level (users of MCA-21 services) or Back Office level (ROC).

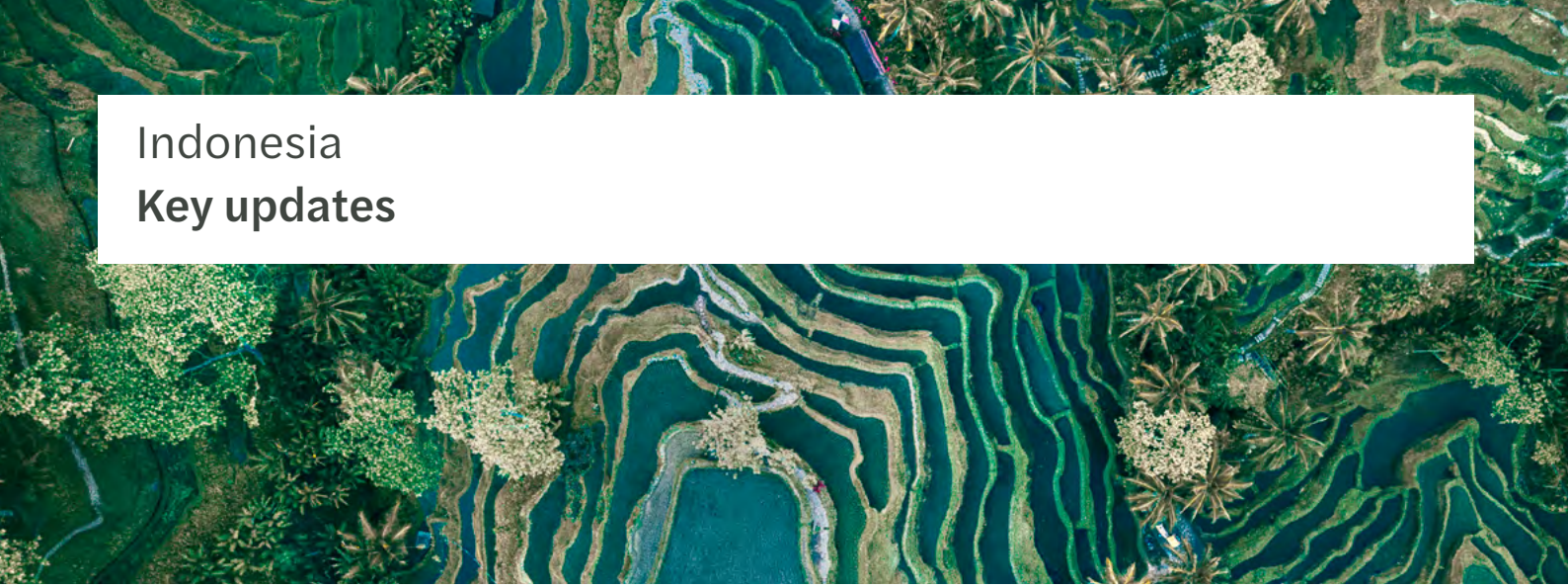
Significance

This Form primarily is intended to be used for purposes like Master Data correction and to comply with certain directions of Courts/Tribunals, which ordinarily cannot be complied with through existing functionality of forms or services on MCA-21 system.

The Form should be processed by ROC within 03 days of its filing, after which it should be forwarded to Joint Director (e-governance cell), who shall process and decide the matter within a maximum time of 07 days. By providing stakeholders with a platform to address exceptional circumstances, the CRF fosters responsiveness in regulatory compliance.

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Indonesia
Key updates

Products of food and beverage to be halal certified by October 2024

(Government Regulation Number 39 of 2021 concerning the Implementation of the Halal Product Assurance Sector)

Background

Indonesian Law Number 33 of 2014 concerning Halal Product Assurance emphasizes the requirement for products to have halal certification when entering, circulating and being traded in Indonesian territory.

On 2 February 2021, the Indonesian government issued Government Regulation Number 39 of 2021 concerning the Implementation of the Halal Product Assurance Sector ("GR 39/2021"), as a guideline for the implementation of halal product certification in Indonesia.

GR 39/2021 was issued with a provision to enforce products of food and beverages to be halal certified no later than 17 October 2024.

Regulatory Highlights

Subject to GR 39/2021

The products that need to be halal certified by 17 October 2024 include food and beverage products, ingredients, additives, auxiliary ingredients for food and beverage products, slaughtered products and slaughtering services.

The requirement is specifically for products that are manufactured from medium to large enterprises. At the Indonesian Cabinet Ministerial Meeting on 15 May 2024, President Joko Widodo decided to postpone halal certification for products from micro and small enterprises until October 2026.

Registration mechanism and assessment process

The submission of the application must be in written form and directed to the head of Halal Product Assurance Agency / Badan Penyelenggara Jaminan Produk Halal ("**BPJPH**"). The application shall be submitted with the required documents.

The required documents for the halal certification registration include Business Identification Number (NIB) and business permit documents, the name and type of product, the list of products and ingredients used, which must be halal proven by halal certificates, except if derived from nature in the form of plants and mining materials without going through processing, categorized as having no risk of containing prohibited substance, and/or not classified as dangerous or not come in contact with haram substances. Business actors should also provide the product processing documents containing information regarding purchasing, receiving, storing materials used, processing, packaging, storing finished products, and distribution.

The company will be audited by auditor from Lembaga Pemeriksa Halal / Halal Inspection Agency ("**LPH**"), in accordance with the standards established by the BPJPH. The audit will encompass various aspects, such as evaluating the validity of documents and conducting halal testing on the products.

The Indonesian Ulema Council / Majelis Ulama Indonesia ("**MUI**") through the MUI halal fatwa session will determine if the product is halal or not halal.

BPJPH grants a halal certificate that remains valid for four years and can be renewed, unless there are changes in the ingredients used.

Sanctions

The company or business actors who violate the implementation of halal product assurance will be subject to administrative sanctions, such as: (i) written warning; (ii) administrative fines; (iii) revocation of halal certificate; (iv) withdrawal of goods from the market circulation; (v) suspension of business operation.

Regulation updates on electronic information and transactions

(Law Number 1 of 2024 concerning Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions)

Background

On 2 January 2024, President Joko Widodo officially approved Law Number 1 of 2024 concerning Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions ("Law 1/2024")

Law 1/2024 intended to enhance protection and strengthening safeguards for Indonesian citizen in information technology usage and transaction.

Regulatory highlights

Several key changes are made in the Law 1/2024 such as the following:

1. In relation to Electronic Certification Provider ("**ECP**") business entities

   As mandated in Article 13, ECP must establish a legal entity in Indonesia and to be domiciled in Indonesia. Law 1/2024 introduced a provision to exempt ECP from establishing a legal entity if the provision of services using electronic certificates is not yet available in the country.

   Reciprocal recognition or mutual recognition to acknowledge electronic certificates between countries must be based on a cooperation agreement.

   Additional provision included to specify types of services offered by ECP, such as: (i) electronic signatures; (ii) electronic seals; (iii) electronic time markers; (iv) recorded electronic delivery services; (v) website authentication; (vi) preservation of electronic signatures and/or electronic seals; (vii) digital identity; and/or (viii) other services that use the Certificate Electronic.

2. In relation to Electronic System Provider ("ESP") business entities

   The ESP needs to implement system upgrades and operational modifications to comply with child protection requirements as stipulated in Article 16A, such as: minimum age restriction, age verification check, and to provide a reporting mechanism for misuse of products, services, and features that violate or potentially violate children's rights.

   ESP who violated child protection requirements will be sanctioned to administrative saction such as (i) written warnings; (ii) administrative fines; (iii) temporary suspension; and/or (iv) termination of access.

   ESP offering digital goods services should align its IT transaction standards with Indonesian law as the governing legal framework.

3. Requirement for high-risk electronic transactions between parties to use electronic signatures secured with electronic certificates, intended to minimize the risk of fraud or identity theft in high-risk transactions.

4. International Electronic Contract with standard clauses made by ESP should use Indonesia as the governing law. It is subject to certain conditions such as: (i) the user being from Indonesia and providing consent within Indonesia's jurisdiction; (2) the performance of contract taking place in Indonesia, and; (iii) the ESP having a business presence in Indonesia. This provision aims to safeguard users of ESP in Indonesia by guaranteeing access to an effective and efficient legal system to exercise their legal rights and obligations.

Public House Savings (TAPERA)

(Government Regulation Number 21 of 2024 concerning Amendments to Government Regulation Number 25 of 2020 concerning the Implementation of Public House Savings)

Background

On 20 May 2024, the Indonesian government issued Government Regulation Number 21 of 2024 concerning Amendments to Government Regulation Number 25 of 2020 concerning the Implementation of Public House Savings ("**GR 21/2024**"). Public House Savings ("**TAPERA**") is said to be the government's solution to financing housing for workers. Based on Article 1 (1) GR 21/2024, TAPERA is a deposit of money taken periodically within a certain period, which only be used for housing financing and will be returned with the accumulated result after the participation has ended.

Regulatory highlights

Subject to TAPERA

Indonesian citizens or foreign nationals who have been employed in Indonesia for a period of six months, possess the status of a worker or independent worker (freelancer), and earn a minimum wage income.

State Civil Apparatus, members of Indonesian national Army and national Police, state officials, workers of state-owned enterprises, regional-owned enterprises, village-owned enterprises, private employees, and independent workers.

Amount and Mechanism

Participants who receive the wages, the amount of savings set by the government is 3% (three percent) of the wages. The employers bear 0,5% (zero-point five percent), while workers bear 2,5% (two-point five percent) of savings.

Participants who are self-employed or freelancers must cover all the savings on their own, and the amount is determined based on their reported income.

The employers are obliged to pay the participants' savings and the deposits are made at the latest by the tenth day of each month. In cases where the tenth day falls on a holiday, the deposit is paid on the first working day hereinafter.

Self-employed participants are required to deposit their own deposits through custodial banks, receiving banks, or other parties.

Enforcement Deadline

According to GR 25/2020, private employers are allowed to enrol their employees with the Tapera Management Agency within a maximum period of 7 (seven) years from its effective date in 2020. This implies that TAPERA should be enforced to all categories of workers at the latest by year 2027.

Jakarta's shift towards national economic center and global city status

(Law Number 2 of 2024 concerning Jakarta Special Region Province)

Background

On 25 April 2024, President Joko Widodo officially approved Law Number 2 of 2024 concerning Jakarta Special Region Province ("**Law 2/2024**")

This new legislation signifies a shift in Jakarta's status as initially stated in Law Number 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta ("**Law 29/2007**")

Additionally, Law 2/2024 addresses the process of transitioning the capital city from Special Region of Jakarta to the Nusantara Capital City / Ibu Kota Nusantara in Kalimantan Province.

Regulatory Highlights

Law 2/2024 brought a transformation in the administrative structure of the Special Capital Region of Jakarta, leading to its reclassification as the Special Region of Jakarta and the removal of its status as the capital city of Indonesia.

Jakarta is granted a special authority to function as the National Economic Center and Global City:

- Jakarta as National Economic Center to establish itself as the primary hub for economic activities across the country, serving as the central point for business operations nationwide.
- Jakarta as a Global City to play a crucial role in facilitating global economic and business endeavours. It serves as a platform for international trade, investment, and various other activities, while also serving as a key center for the production of essential international goods.

Law 2/2024 stipulated that the government of Jakarta had the authority to manage the regional assets for investment purposes or utilization with third parties, through various methods such as: (i) leasing; (ii) utilization cooperation; (iii) build-transfer or build-transfer-operate; (iv) operational cooperation; (v) lease cooperation; (vi) utilization cooperation; (vii) empowerment cooperation, and; (viii) other cooperation as regulated by the law.

In contrast to Law 29/2007 which confined Jakarta's cooperation to governmental bodies, as stated in Article 49 of Law 2/2024, the new regulation has expanded the scope for government to cooperate with regions, businesses, and institutions, both domestic and international.

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Japan
Key updates

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Malaysia
Key updates



SSM - Submission of Beneficial Ownership Information

Pursuant to the Companies (Amendment) Act 2024, all companies are required to file the Beneficial Owner (BO) information to SSM via e-BOS platform within 3 months starting from 1 April 2024.

The Beneficial Owner (BO) is referring to a person who ultimately owns or controls a company through not less than 20% direct/ indirect voting shares, or not less than 20% of direct/indirect interest in shares or an individual who exercises ultimate effective control over the company.

SSM had issued the "Guidelines for the Reporting Framework for Beneficial Ownership of Companies" and "Case Studies and Illustrations of the Guidelines for the Reporting Framework for Beneficial Ownership of Companies" for the purpose of assisting the stakeholders, especially companies and company secretaries in complying with the legal requirements relating to beneficial ownership.

Currently, there are no exemption given to any class of companies under Section 60E of the Companies Act 2016. Hence, all companies must fully comply with the beneficial ownership reporting framework.

References:

- Companies (Amendment) Act 2024
- Guidelines For The BO Reporting Framework
- Case Studies & illustrations For the BO Reporting Framework

SSM - Practice Directive No. 9/2024

On 13 May 2024, Suruhanjaya Syarikat Malaysia (SSM) had issued a Practice Directive No. 9/2024 (PD9/2024), relating to the procedures for the lodgement of beneficial ownership information pursuant to subsection 60B(7) of the Companies Act 2016 (CA 2016) and related matters.

SSM – Extension of Time for Lodgement of BO Information via e-Bos

On 26 June 2024, Suruhanjaya Syarikat Malaysia (SSM) had issued a revised Practice Directive No. 9/2024 (PD9/2024) which relating to the extension of time for the lodgement of beneficial ownership (BO) information to Registrar via e-BOS from 30 June 2024 to 30 September 2024.

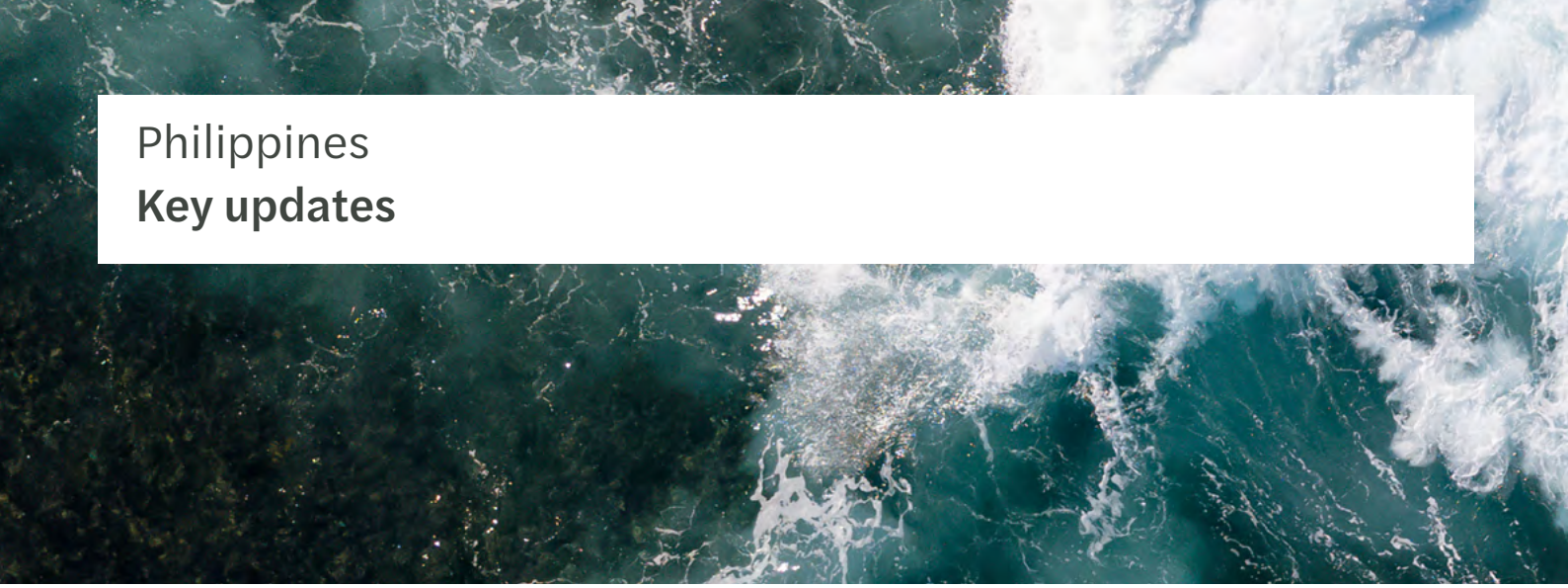
Companies which had lodged the BO information and have the need to rectify any particular of the beneficial ownership information previously lodged with the Registrar may do so through the e-BOS without any rectification fee being imposed and no late lodgement will be imposed.

References:

- (revised) Practice Directive No. 9/2024
- FAQ of BO Reporting

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Philippines
Key updates

Crowdfunding in the Philippines

Addressing international best practices and standards, the Philippines has recently issued a regulation on crowdfunding.

In the Philippines, crowdfunding is defined as the offer or sale of securities of a limited scale usually for start-ups, micro, small and medium enterprises (MSMEs) done through an online electronic platform.

The Parties

1. Entrepreneur or project initiator
2. Supporters or those willing to fund the entrepreneur's business idea or project
3. Platform or moderating organization that brings the entrepreneur and supporters together to realize the business idea or project

In order to be an intermediary in a crowdfunding transaction the entity or person must be a registered broker, an investment house or a funding portal.

Brokers refer to persons engaged in the business of buying and selling of securities for the account of others, while Investment Houses refer to enterprises engaged in the underwriting of securities of another person or enterprise, including securities of government and its instrumentalities, among others.

On the other hand, a funding portal is an intermediary organized and registered as a corporation to facilitate transactions involving the offer or sale of CF securities through online electronic platform. It excludes offering of investment advice or recommendations; solicit purchases, sales or offers to buy the securities displayed on its platform; compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform; or hold, manage, possess, or otherwise handle investor funds or securities.

Kinds of Crowdfunding

1. Donation-based crowdfunding, where individuals pool their resources to support a charitable cause.
2. Reward-based crowdfunding, where individuals give money to a company in return for a reward, usually a product produced by the company.
3. Lending-based crowdfunding, where individuals lend money to a company and receive the company's legally binding commitment to repay the loan at pre-determined time intervals and interest rate.
4. Equity-based crowdfunding, where individuals invest in shares sold by a company and receive a share of the profits in the form of a dividend or distribution, subject to the company's discretion.

In the last three years, the crowdfunding sector has raised close to PhP 2 billion and is one of the fastest-growing sources of alternative funding with about 333 successful money-raising deals worth PhP 1.94 billion since 2020, that was used to fund 1,143 projects.

For 2023, 146 companies tapped crowdfunding to raise PhP 427 million for 1,114 projects. Currently there are only 3 crowdfunding firms in the Philippines.

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Singapore
Key updates

Updates on Corporate Service Providers Bill (the "CSP Bill") and the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Bill ("CLLPMA Bill") (collectively the "Proposed Bills")

The Accounting and Corporate Regulatory Authority ("ACRA") had earlier announced its plans to amend the ACRA-administered legislation to enhance the regulatory regime for the corporate service provider ("CSP") sector, and transparency of beneficial ownership of companies and limited liability partnerships.

The CSP Bill will enhance the regulatory regime for the CSP sector and the CLLPMA Bill will enhance the transparency of beneficial ownership of companies and limited liability partnerships. These Proposed Bills seek to ensure that the regime for the sector and beneficial ownership in Singapore are in line with the standards of the Financial Action Task Force.

Previously on 12 March 2024, the Ministry of Finance ("MOF") and ACRA sought public feedback on the Proposed Bills. This public consultation exercise ran from 12 to 25 March 2024.

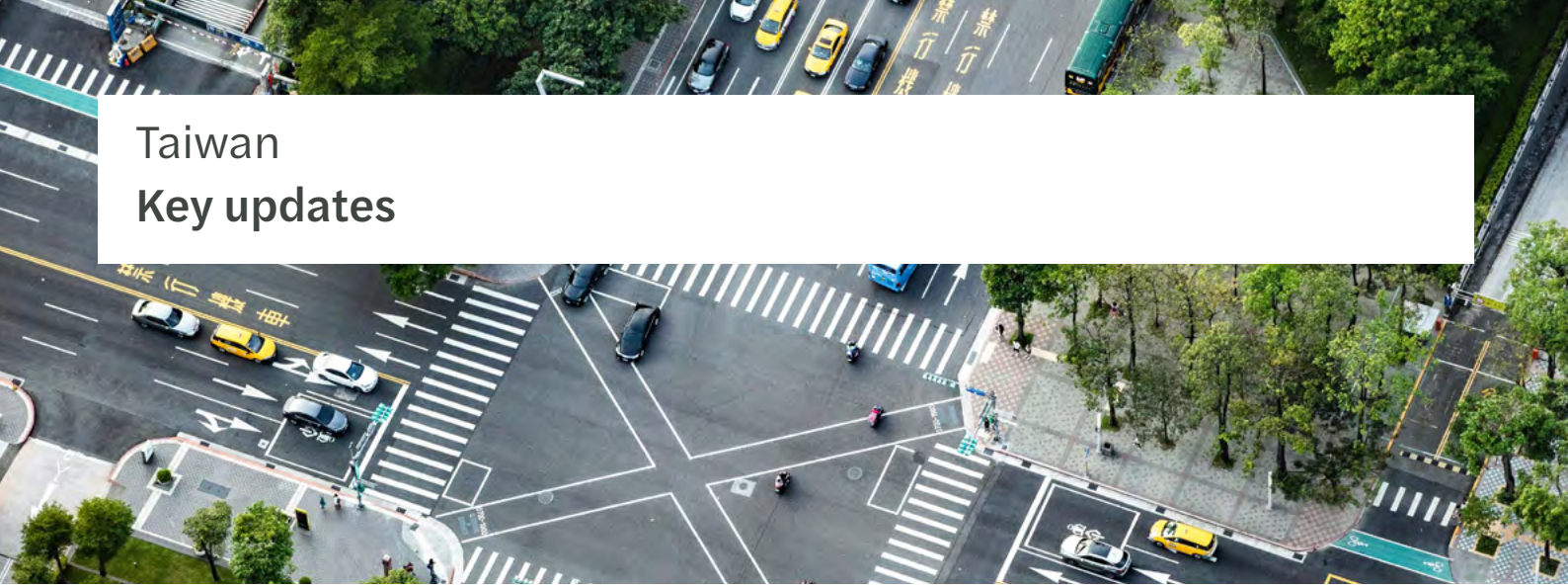
The feedback received was generally supportive of the Proposed Bills. MOF and ACRA's responses to the feedback received were published on 2 May 2024.

The Proposed Bills were tabled for first reading in Parliament on 7 May 2024. The Proposed Bills have been passed by the parliament on 2 July 2024.

To read our article on this development, please click here.

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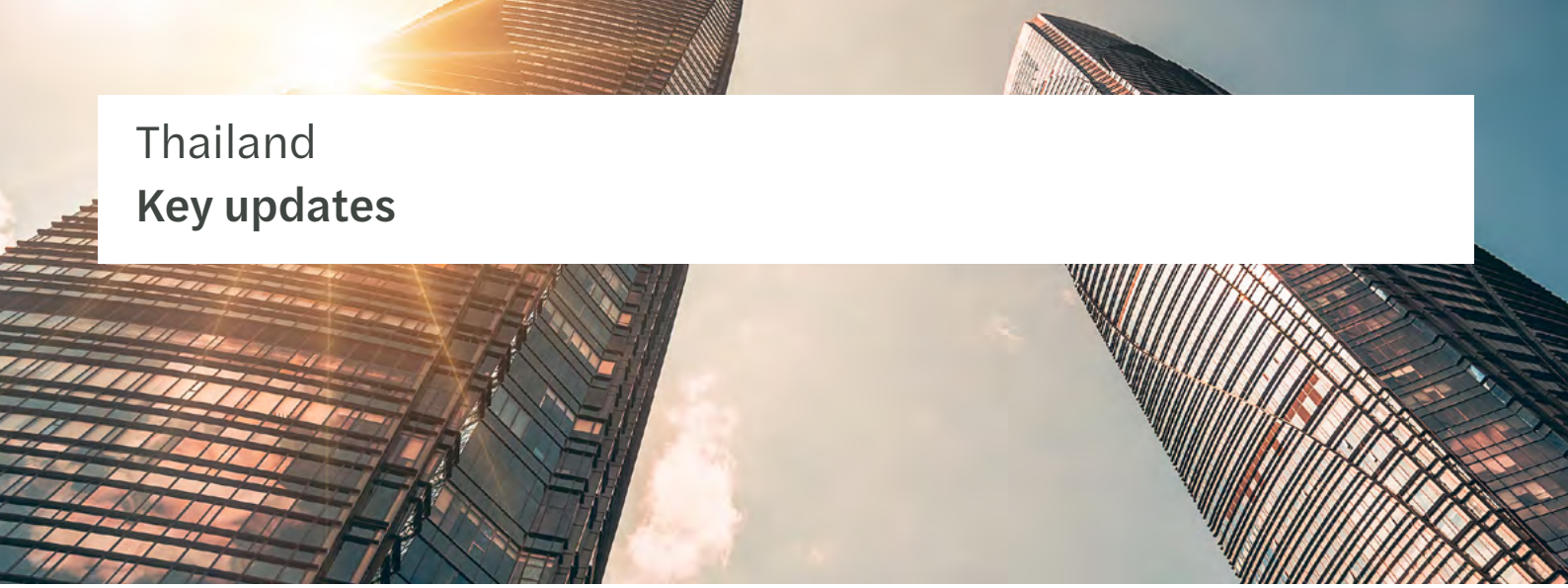


Taiwan
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