

DREW NETWORK ASIA (DNA)

# RESPONDING TO COVID-19

Key measures implemented in Indonesia, Malaysia  
and Singapore to support businesses

**April 2020**

# About Drew Network Asia

Drew Network Asia (DNA) is a blue chip regional legal network comprising well established South East Asian law firms, Drew & Napier LLC from Singapore, Shearn Delamore & Co. from Malaysia, and Makarim & Taira S. from Indonesia.

The DNA network is a full service legal team with international perspective, strong local expertise and impeccable service standards. The network is a regional platform which will enable our clients who seek legal advice and representation within the ASEAN region to obtain integrated and collaborative legal service.

While remaining independent, depending on our clients' needs, we operate as a "firm of firms" so that our clients are seamlessly serviced in multiple jurisdictions.

Each pillar firm of DNA has a track record of a client-focused approach, high quality legal advice, and cutting-edge solutions. All DNA firms have consistently garnered client recognition and prominent accolades in the world's most prestigious international legal publications.

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## INDONESIA

1. Indonesian Financial Services Authority relaxes the loan quality assessment and restructuring requirements for borrowers affected by COVID-19.
2. The reduction of corporate income tax from 25% to 22% for Tax Year 2020 and 2021, and further to 20% for Tax Year 2022.
3. Whether the COVID-19 pandemic constitutes a force majeure event depends on the definition of force majeure (if any) in each contract. Force majeure gives grounds for termination of employment, but employers are obliged to provide severance pay to their employees.
4. The current pandemic is expected to accelerate the acceptance of e-signatures in contracts.

## FOREWORD

The current COVID-19 pandemic has impacted businesses around the world. Closer to home, the governments of Malaysia, Indonesia and Singapore have taken urgent action to support businesses, and to assist them in transforming their operations. A number of these measures are highlighted below, as well as developments arising from these measures.

## FINANCIAL SUPPORT MEASURES

**Lending support:** A common challenge facing businesses is the need to meet their immediate cash flow needs. To that end, the authorities in all three countries have taken decisive action to enhance accessibility to funds.

The Central Bank of Malaysia (“**BNM**”) has enhanced its financial facilities under the BNM’s Fund for SMEs. This includes an increase in the Special Relief Facility from RM 2 billion to RM 5 billion, and reducing the maximum financing rate from 3.75% to 3.50% p.a. until 31 December 2020. BNM’s All Economic Sectors Facility has also been increased from RM 5.8 billion to RM 6.8 billion to enhance access to financing for SMEs and to support growth. The maximum financing rate under that facility has also been reduced from 8% p.a. to 7% p.a.

The Monetary Authority of Singapore (“**MAS**”) has offered banks and finance companies low-cost funding through a new facility, for loans they provide businesses under Enterprise Singapore’s SME Working Capital Loan Scheme and Temporary Bridging Loan Programme, to lower interest rates on these loans. At the same time, existing loan programmes have been enhanced to expand the number of eligible businesses and to increase the available loan quantum.

On 23 March 2020, the Indonesian Financial Services Authority (OJK) issued Regulation No. 11/POJK.03/2020, which relaxes the loan quality assessment and restructuring requirements for borrowers affected by COVID-19. This will make it easier for businesses to obtain loans and/or to restructure the same. For example, loans of up to IDR 10 billion are now assessed only according to a borrower’s timeliness in paying the relevant principal amount, interest or margin/profit sharing/ujrah (“fee” under Sharia law).

**Tax rebates and reliefs:** There have been a slew of tax rebates and reliefs offered in the three jurisdictions.

Scheduled income tax instalment payments by SMEs in Malaysia have been postponed for a 3-month period. The Inland Revenue Authority of Singapore has also granted an automatic deferment of corporate income tax payments due in April, May and June 2020. In addition, the Singapore government has passed legislation to oblige property owners to pass on substantial property tax rebates to their tenants.

## MALAYSIA

1. BNM: Increase in Special Relief Facility and All Economic Sectors Facility with reduced maximum financing rates.
2. Wage Subsidy Program: RM600 - RM1,200 for 3 months.
3. Financial institutions: 6 months moratorium on loan payments.
4. 3 months' postponement of scheduled income tax payments by SMEs.
5. Upcoming Employer Advisory Services for deferral of payments, restructuring and rescheduling of employer contributions.

In Indonesia, the tax reliefs appear more wide-reaching. As of 1 April 2020, there would be an exemption from Income Tax under Article 21 of the Minister of Finance Regulation No. 23/PMK.03/2020 on Tax Incentives for Taxpayers who are Affected by the Outbreak of the Coronavirus Disease, and under Article 22 in relation to import transactions. There would also be a 30% reduction in Income Tax instalments under Article 25, and a paid In-Advance Value Added Tax Refund of up to IDR 5 billion. The Government Regulation in Lieu of Law No. 1 of 2020 on State Financial Policy and the Stability of Financial Systems for the Handling of the Corona Virus Disease 2019 (COVID-19) Pandemic and/or In Order to Address Threats that Endanger the National Economy and/or the Stability of Financial Systems issued on 31 March 2020 also stipulates the reduction of corporate income tax from 25% to 22% for Tax Year 2020 and 2021, and further to 20% for Tax Year 2022. Local corporate taxpayers which are publicly-listed companies, subject to certain requirements, may be granted a further 3% reduction for the respective Tax Years.

**Labour Costs:** The Malaysian and Singapore governments have introduced substantial measures to reduce the burden of labour costs on businesses. In Malaysia, the Wage Subsidy Programme allows eligible employers to receive RM 600 to RM 1,200 for each employee earning below RM 4,000 for a three-month period. Additionally, Malaysia is awaiting the introduction of the Employer Advisory Services ("EAS") on 15.04.2020 by the Employees Provident Fund ("EPF") which would provide options for deferral of payments, restructuring and the rescheduling of employer contributions. In February 2020, the Singapore government launched its Jobs Support Scheme ("JSS"), which has since been enhanced. Under the JSS, the government will co-fund the first S\$ 4,600 of gross monthly wages for each local employee for 9 months.

## RELIEF FROM LEGAL OBLIGATIONS

Another major concern for businesses relates to existing legal obligations and how they are impacted by measures imposed to contain the spread of COVID-19.

In Indonesia, Malaysia and Singapore, the concept of force majeure applies to provide contracting parties with some relief from the effects of COVID-19 on their business arrangements. However, they have dealt with the issue of relief from contractual arrangements differently.

In Indonesia, force majeure is recognised under Articles 1244 and 1245 of the Indonesian Civil Code ("ICC"). Whether the COVID-19 pandemic constitutes a force majeure event depends on the definition of force majeure (if any) in a given contract. Different regulations may regulate or define force majeure differently. In the context of the Indonesian Manpower Law, force majeure gives grounds for termination of employment, but employers are obliged to provide severance pay to their employees. Whilst the Manpower Law does not define force majeure, the Ministry of Manpower has an unwritten policy requiring a force majeure event to be validated by the Indonesian Government such as in the Tsunami tragedy in Aceh in 2004.

## SINGAPORE

1. Existing Enterprise Singapore loan programmes such as Temporary Bridging Loan Programme enhanced.
2. Deferment of corporate taxes due in April, May and June 2020, and property tax rebates to be passed to tenants.
3. Government co-funding of 25% to 75% of the first S\$4,600 of gross monthly wages for all local employees for a period of 9 months.
4. COVID-19 (Temporary Measures) Act 2020: relief for some contracting parties which cannot meet their contractual obligations due to the COVID-19 situation.
5. Enhancement of various grants and programmes through Enterprise Singapore which will help companies digitalise, restructure and transform.

In Singapore, Parliament took the unprecedented step of intervening in private contracts, when it passed the COVID-19 (Temporary Measures) Act 2020 on 7 April 2020. This new legislation will allow, among other things, individuals or companies engaged in certain categories of contracts, but cannot meet their contractual obligations due to the COVID-19 situation, to seek temporary relief from obligations that have to be performed on or after 1 February 2020, and entered into before 25 March 2020. Contracting parties may not be allowed to commence legal proceedings against non-performing parties which have served them a notice for relief, and proceedings relating to a prohibited action which has already commenced will be stayed. These measures will be in place for six months and its duration may be extended for an additional period of up to one year.

In Malaysia, financial institutions are granting a deferment of loan repayments for a 6 month period in respect of Malaysian ringgit denominated facilities (where the account is not in arrears exceeding 90 days as at 01.04.2020).

## MEASURES TO PREPARE FOR RECOVERY

With social distancing measures in place to prevent the spread of COVID-19, many businesses have had to adjust to the current restrictions, Yet, there is a great opportunity for businesses to innovate and leverage on technology to emerge dynamically into a post-COVID-19 world.

Farmers in Cameron Highlands, Malaysia are now selling their produce through a special sales and delivery service provided by Lazada. Local food companies and restaurants have had to continue their business through food delivery services such as Foodpanda, Gofood and Grab. These developments will change the way we live and do business.

One important change which may develop in Indonesia is the usage of electronic signatures (or e-signatures) in contracts. Whilst its validity is provided for under Law No. 11 of 2008 on Electronic Information and Transactions, and Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, use of e-signatures is hampered by the fact that Indonesian procedural laws such as the ICC or the Indonesian Code of Civil Procedure do not yet provide for e-signatures. The Indonesian courts have also been traditionally ambivalent about the admissibility of electronic evidence, and are only starting to accept electronically signed documents in legal proceedings. The current pandemic is expected to accelerate the acceptance of e-signatures in contracts. In the meantime, to minimise the risks arising from the use of e-signatures in contracts governed by Indonesian law, parties should have an express term in the contract specifying its validity and precluding any challenge on account of its use.

Recognising the opportunity to transform businesses, the Singapore government has taken steps to help companies digitalise and prepare their businesses for recovery following the pandemic. These include funding support under the SMEs Go Digital Programme for the adoption of pre-approved digital solutions, as well as funding for advanced digital solutions which strengthen business continuity measures or develop integrated B2B systems for end-to-

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end transactions. In addition, Enterprise Singapore's Productivity Solutions Grant and Enterprise Development Grant support the adoption of pre-approved off-the-shelf productivity solutions and equipment, as well as help eligible companies to undertake projects in core capabilities, innovation and productivity, and market access, respectively.

## CONCLUSION

There can be no doubt that the COVID-19 pandemic has changed and will change the world we live and work in. As countries react and implement further measures and legislation in response to these changes, it is important to have good legal counsel to advise you in navigating the evolving legal and business landscape. DNA is ready to partner with you on this journey and have COVID-19 response teams in Malaysia, Indonesia and Singapore. Please contact us if you have any query in relation to this bulletin or to any measure implemented in these countries.

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**For assistance relating to Covid-19 matters, please contact:**

**Indonesia**

**Makarim & Taira S.**  
Summitmas I, 16th & 17th floors  
Jl. Jend. Sudirman Kav. 61-62  
Jakarta 12190

E: [covid19team@makarim.com](mailto:covid19team@makarim.com)

**Malaysia**

**Shearn Delamore & Co.**  
7th Floor, Wisma Hamzah-Kwong Hing  
No.1, Leboh Ampang  
50100 Kuala Lumpur, Malaysia

E: [covid19support@shearndelamore.com](mailto:covid19support@shearndelamore.com)

**Singapore**

**Drew & Napier LLC**  
10 Collyer Quay  
#10-01 Ocean Financial Centre  
Singapore 049315

E: [covid19responseteam@drewnapier.com](mailto:covid19responseteam@drewnapier.com)

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