



DEZAN SHIRA & ASSOCIATES  
Your Partner for Growth in Asia

AN INTRODUCTION TO

# Doing Business in ASEAN 2022

Special Focus

Staying Compliant in ASEAN's  
Dynamic HR Environment



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This edition of Doing Business in India was produced by a team of professionals at Dezan Shira & Associates, with Ayman Falak as Editor. Creative design of the guide was provided by Raffaele Bertone.

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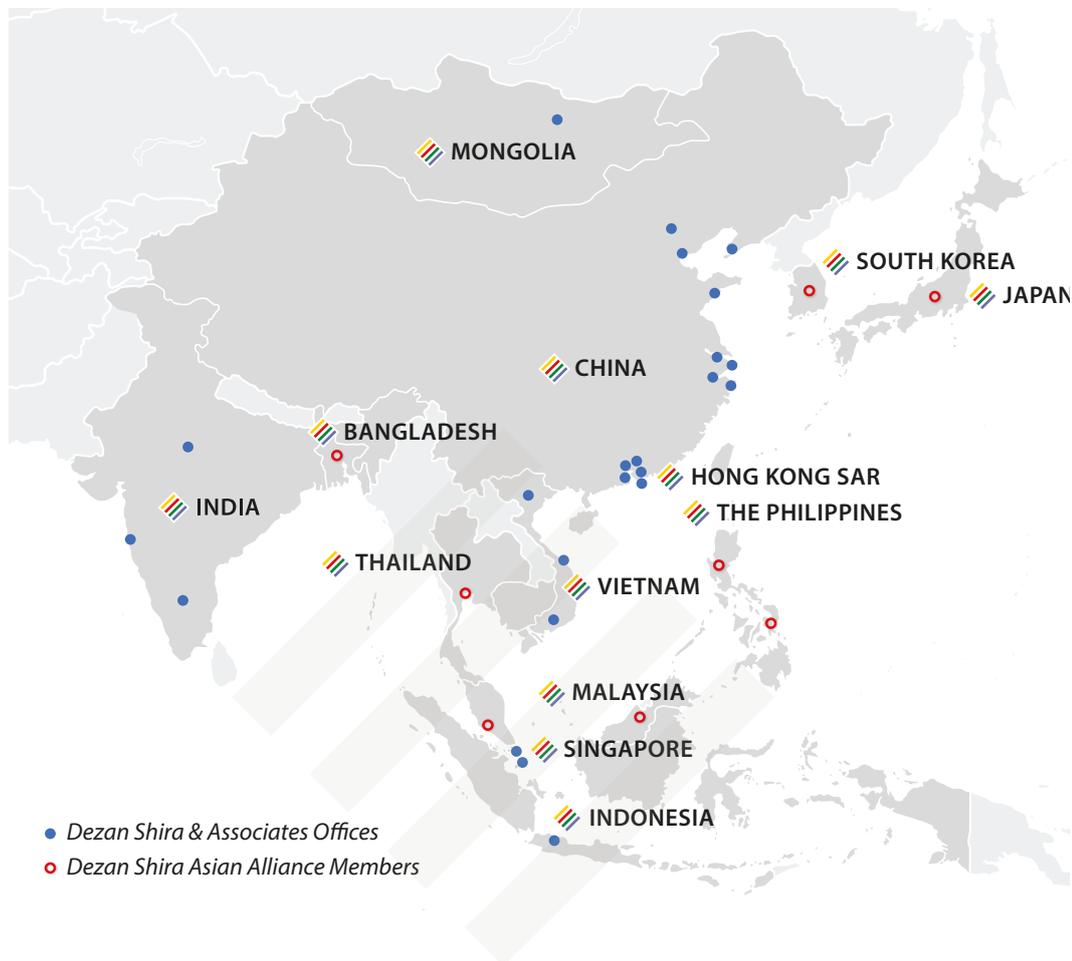
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# DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



## About Dezan Shira & Associates

At Dezan Shira & Associates, our mission is to guide foreign companies through Asia's complex regulatory environment and assist them with all aspects of establishing, maintaining and growing their business operations in the region. Since its establishment in 1992, Dezan Shira & Associates has grown into one of Asia's most versatile full-service consultancies with operational offices across China, Hong Kong, India, Singapore and Vietnam, as well as liaison offices in Italy, Germany and the United States, and partner firms across the ASEAN region. With over 25 years of on-the-ground experience and a large team of professional advisers, we are your reliable partner in Asia.

# Preface



**ALBERTO VETTORETTI**  
Managing Partner  
Dezan Shira & Associates



The Association of Southeast Asian Nations (ASEAN) was established in 1967 by Indonesia, Malaysia, Philippines, Singapore, and Thailand to accelerate the economic growth and social development in the region. Brunei Darussalam joined in 1987, Vietnam in 1995, Lao DPR and Myanmar in 1997, and Cambodia in 1999.

ASEAN is home to more than 600 million people (larger than the EU and North America) and has the third-largest labor force behind India and China. Since its inception, the bloc has seen growth in myriad sectors, such as manufacturing, retail, transportation, and telecommunications. The bloc is expected to become the world's fourth largest economy by 2030 with domestic consumption expecting to reach US\$4 trillion.

However, the onset of the COVID-19 pandemic has severely impacted ASEAN states as protracted lockdowns resulted in sharp downturn in industrial production, exports, and consumptive expenditure. In response, ASEAN members have quickened the pace of key reforms to improve the ease of doing business and attract foreign investment in new areas, such as high-value manufacturing capabilities and digital technology. These new growth drivers, among others, will make ASEAN attractive to foreign investors, including for those looking to move a part or all of their manufacturing activities from China.

This publication, designed to introduce the fundamentals of investing in ASEAN, was compiled by experts at Dezan Shira & Associates, a specialist foreign direct investment practice, providing corporate establishment, business intelligence, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.

An Introduction to Doing Business in ASEAN 2022 covers the following:

- Corporate establishment;
- Tax and accounting;
- Human resources and payroll; and
- Audit and compliance.



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# What's new in this guide?

Doing Business in ASEAN 2022 introduces the fundamentals of investing in China. Compiled by the professionals at Dezan Shira & Associates in December 2022, this comprehensive guide is ideal not only for businesses looking to enter the ASEAN market.

To be more specific, we would like to highlight:

**Understanding ASEAN's human resource landscape:** We have extended the human resources and payroll section to include an overview of current talent availability in ASEAN, and future factors that will impact human resource development in the region. We then explore the industrialization plans of select ASEAN members and its impact on human resources.

Other major updates across ASEAN that have been included in this guide are mentioned below:

**Cambodia:** We have updated coverage of Cambodia to include updates on its labor laws and other business reforms. The country is looking to attract more foreign investment as it continues to be impacted by the loss of duty-free access to the EU market.

**Indonesia:** Indonesia saw major changes due to the new Omnibus Law and we have updated sections on corporate establishment, taxes, and HR.

**Malaysia:** Malaysia's updates cover new tax measures impacting businesses and individuals.

**Philippines:** The Philippines issued the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE Act) this year. We have updated sections discussing business reforms and tax relief for companies in financial need, among other benefits.

**Singapore:** We have updated coverage of the slew of new programs issued by Singapore to encourage more foreign investment as well as assist local companies impacted by the pandemic.

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ASEAN's economic performance has outperformed the global average in recent years as it aims to enhance its attractiveness to foreign investors.

ASEAN members are trying to realize their potential by issuing initiatives to liberalize trade and standardize regulatory and legal frameworks. These prerequisites vary among member states, and can impact the transparency, length, and cost of establishing a company in the region.

## Brunei

Brunei Darussalam has seen a gradual increase in the World Bank's Ease of Doing Business report, ranking 105 in 2014 to 66 in 2020. In the report, the country maintained its number one joint-ranking for the 'getting credit' category with New Zealand, which reflects the strength of Brunei's credit reporting system. In terms of starting a business, Brunei was ranked 16<sup>th</sup>.

Registering a business can now be done online by creating an account on the One Common Portal (OCP) system on the Ministry of Finance and Economy website.

### Corporations

Establishing a limited liability company (Sdn Bhd) is the preferred option for most foreign investors as there is no minimum share capital required. The advantages are that the foreign investor can own all the shares in the company and that the shareholders' liabilities are limited to their share capital contributions.

### Incorporation

The first step in the incorporation process is to research the available names at the Registrar of Companies. Once a name has been approved, the applicant should submit the following through the online submission form:

- Articles of association (including share capital and allotment of shares);
- Memorandum;
- Signed copy of the directors' national identity card or passport;
- Details of directors;
- Office address; and
- Declaration of compliance.



**ALBEE LEE**

Manager  
Dezan Shira & Associates  
Singapore Office

*“Despite recording a downturn, ASEAN economies offer compelling investment prospects for prominent businesses and niche industries given the region’s well-established trade networks, growing middle-class cohort, and a young and educated workforce.”*

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The company requires a minimum of two shareholders, which can be natural persons or legal entities with the maximum number of shareholders set at 50. The minimum number of directors required is two, where one must be a Brunei citizen or a resident.

Additionally, there is a BND 300 (US\$219) fee for incorporating a private limited company and BND 30 (US\$22) fee for registering a business name.

## Branch office

Establishing a branch office is the ideal choice for foreign investors who do not want to go through the process of appointing a local director. However, the branch office must still appoint a local agent. The incorporation procedure is similar to that of a limited liability company except the complementing documents are different. The applicant will need to submit the following materials:

- A consent letter from the main branch
- A certified certificate of incorporation or registration in place or origin or similar document
- A certified true copy of the company charter or articles of associations defining the constitution of the parent company;
- A memorandum of appointment or power of attorney (including the name and address of two or more individual's resident in Brunei Darussalam authorized to accept service of process and any notices, with the parent company seal)
- List of directors (Form IV (F));
- An original copy of the company resolution approving the establishment of a branch office in Brunei;
- A list of authorized persons;
- Undertaking letter; and
- Notice of office registration in Brunei.

The branch office must have a registered office and will be subject to the corporate tax rate of 18.5 percent on income derived from or received in Brunei.



## Cambodia

Most industries in Cambodia allow for 100 percent foreign ownership, although this exception only when a company owns land in which case the company must have majority Cambodian ownership.

## Corporations

Private limited companies are the most favored investment vehicles for foreign investors. This is because for most business sectors, there are no limitations on foreign ownership.

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Furthermore, the start-up capital is fairly modest at US\$1,000. The Cambodian authorities, however, can ask for higher capital requirements for some selected industries.

The private limited company would still require two shareholders and one director, and these persons do not have to be a Cambodian national.

## Branch office

Foreign branch offices are considered as extensions of the parent company and are allowed to buy and sell goods and services in the manufacturing, processing, and construction industries. However, these must be in-line with the business activities of the parent company.

## Representative office

Representative offices (ROs) are prohibited from earning any income in Cambodia and are often used to test the market before entry. There are no registered capital requirements to set up this type of business entity.

## Incorporation

To incorporate all business entity types, the government launched the Single Portal, an online business registration system, to facilitate this process.

Launched in June 2020, the portal aims to approve applications within eight working days.

There are six ministries integrated into the system: The Ministry of Interior, Economy and Finance, Commerce, Labor and Vocational Training, the General Department of Taxation, and the Council for the Development of Cambodia. This means investors can register their business and taxes under one platform. Further, all fees are done online through various e-payment channels.

## How do you apply for a business license?

There are several steps investors need to follow to begin their application.

### Creating an account

After opening the Single Portal website, visitors should open the 'Register Business' icon, which will instruct the user to download the CamDigiKey app for either Android or iOS.



Visitors should download the app on their mobile device and create an account. Once this has been approved, scan the QR code on the Single Portal website with the CamDigiKey app; the user can then begin registering their business.

In addition to entering their basic information details, there are various documents that investors will need to upload into the system.

To register a foreign company, the following documents are required:

- Lease agreement or land title of the business' location;
- A photo of the current Director, which should be no older than three months and taken on a white background;
- Passport ID or national ID card of the Director;
- The company's or parent company's articles of association;
- Letter of appointment of the Director in the case of a representative office or branch office; and
- Any special licenses.

## Tax registration

Once the business is registered, the applicant should then fill out the tax registration section. Foreign companies will need to upload the following documents:

- Property information of where the business is domiciled or proof of payment of property tax; and
- Bank account details (this information must be given in digital form within 15 working days after tax registration).

## Notice of enterprise opening

The 'Notice of Enterprise' section requires the applicant to enter details regarding the estimated number of employees (local and foreign) and their gender.

Moreover, the applicant must state the type of weekly holidays available for employees and the number of working hours per week.

## Pricing scheme

The final step is the payment, which can be done through debit/credit cards or through the ABA Bank app.

The cost of business registration varies based on the type of enterprise and its taxpayer classification by the General Department of Taxation.

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Foreign companies will first need to reserve a company name at a cost of 25,000 riels (US\$6). The business registration fee will cost 1 million riels (US\$246).

## Notice for enterprise opening fee

There is a fee for the 'notice for enterprise opening' set at 120,000 riels (US\$30) for all enterprise types.

## Applying for QIP projects

Through the Single Portal, investors can also apply for QIP (Qualified Investment Projects) projects. QIPs are projects that are eligible to receive fiscal and non-fiscal incentives from the Cambodian Investment Board. They are divided into three types – domestic QIPs, export QIPs, and supporting industry QIPs.

## Indonesia

Despite improvements in the Ease of Doing Business report, Indonesia continues to be challenging for foreign investors. The implementation gap between regulations issued by the central government and their application at the regional level can be a major barrier for businesses.

Investors should assess their specific needs carefully before deciding which corporate structure to operate from. Using a reliable local advisor is recommended for first-time investors in the country as they find it easier to remain compliant with applicable regulations.

There are two legal options for foreign investors looking to set up in the country: a foreign investment company (PT PMA) or representative office (RO).

## Foreign investment company

Establishing a foreign investment company or PT PMA, is the preferred structure for companies looking to have a legal presence in the country. Foreign investors will need to have a minimum paid-up capital equivalent of 10 billion rupiah (US\$696,000), an increase from the previous 2.5 billion rupiah (US\$174,135), as the government aims to attract more high-value investments into the country.

Prior to setting up, applicants should study the new Positive Investment List (PIL) to see which business sectors are unavailable or restricted for foreign ownership. The general principle under the positive investment list is that a business sector is open to 100 percent foreign investment unless it is subjected to a specific type of limitation. The regulation presents one of the greatest



liberalizations in foreign ownership limitations in Indonesia since the negative investment list was first introduced in the 1980s.

Important sectors that had previous foreign ownership restrictions, which have now been lifted include, among others::

- Telecommunications;
- Transportation;
- Energy; and
- Distribution.

## The design of the positive investment list

The government has classified business fields into four categories.

1. Priority sectors – 245 business lines open for foreign investment;
2. Business fields that stipulate specific requirements or limitations – 46 business lines open;
3. Businesses fields open to large enterprises, including foreign investors, but are subject to a compulsory partnership with cooperatives and micro, small, and medium-sized enterprises (MSMEs) – 51 business lines open; and
4. Business fields reserved for cooperatives and MSMEs (not open to foreign investment) – 112 business lines.

### Priority sectors

To classify as a priority sector, business enterprises must meet the following criteria:

- Must be labor intensive;
- Must be capital intensive;
- Must be part of a national project/program;
- Must be export-oriented;
- Must involve a pioneer industry (renewables, oil refining, metals, etc.);
- Must utilize advanced technologies; and
- Must implement research and development activities.

There are 245 business fields under this category that can be found under Exhibit 1 of the positive investment list. Moreover, businesses in priority sectors are eligible for a range of fiscal and non-fiscal incentives.

Fiscal incentives include a 50 percent corporate income tax reduction for investments between 100 billion rupiah (US\$6.9 million) and 500 billion rupiah (US\$34.8 million) for a period of five

years and 100 CIT reduction for investments over 500 billion rupiah (US\$34.8 million) for a period between five and 20 years.

In addition, there are tax allowances available in the form of a reduction in the taxable income of 30 percent of the total investment for six years, a special withholding tax rate on dividends of 10 percent, and tax losses carried forward for up to 10 years.

Examples of non-fiscal incentives are the provision of supporting infrastructure, simplified business licensing procedures, and the guaranteed energy supply or raw materials.

There are several advantages of PT PMAs, including:

There are several advantages of PT PMAs, including:

- Special financial and non-financial incentives, particularly in pioneer industries;
- Incentives for setting up in special economic zones (SEZs);

### Business Fields with Specific Requirements

Business fields	Requirements
Publishing of newspapers, magazines (press)	100 percent domestic capital required for <b>establishment</b> , and up to 49 percent foreign capital ownership for business development and expansion
Private broadcasting agency	100 percent domestic capital required for <b>establishment</b> , and up to 20 percent foreign capital ownership for business development and expansion
Subscription based broadcasting agency	100 percent domestic capital required for <b>establishment</b> , and up to 20 percent foreign capital ownership for business development and expansion
Community radio agency	100 percent domestic capital required for <b>establishment</b> , and up to 20 percent foreign capital ownership for business development and expansion
Community television agency	100 percent domestic capital required for <b>establishment</b> , and up to 20 percent foreign capital ownership for business development and expansion
Postal services	Maximum foreign capital ownership of 49 percent
Domestic scheduled air transportation	Foreign capital ownership of 49 percent. However, domestic capital ownership needs to be the single majority
Domestic non-scheduled air transportation	Foreign capital ownership of 49 percent. However, domestic capital ownership needs to be the single majority
Air transport activities	Foreign capital ownership of 49 percent. However, domestic capital ownership needs to be the single majority
Domestic passenger liner and tramp activities	Maximum foreign capital ownership of 49 percent
Domestic sea transport for tourism	Maximum foreign capital ownership of 49 percent

Domestic liner and tramp sea freights for goods	Maximum foreign capital ownership of 49 percent
Domestic sea transportation for special goods	Maximum foreign capital ownership of 49 percent
Pioneer domestic sea transportation of goods	Maximum foreign capital ownership of 49 percent
Domestic sea transportation using public shipping	Maximum foreign capital ownership of 49 percent
Overseas liner and tramp sea freights for goods	Maximum foreign capital ownership of 49 percent
Overseas sea transportation for special goods	Maximum foreign capital ownership of 49 percent
Interprovincial sea public transport	Maximum foreign capital ownership of 49 percent
Interprovincial sea public transport (pioneering)	Maximum foreign capital ownership of 49 percent
Interprovincial city/regency public transport	Maximum foreign capital ownership of 49 percent
Interprovincial city/regency public transport (pioneering)	Maximum foreign capital ownership of 49 percent
Inter-city and regency public transport	Maximum foreign capital ownership of 49 percent
River and lake transportation with non-fixed and irregular routes	Maximum foreign capital ownership of 49 percent
River and lake transportation with non-fixed and irregular routes for tourism	Maximum foreign capital ownership of 49 percent
River and lake transportation for general goods and/or animals	Maximum foreign capital ownership of 49 percent
River and lake transportation for special goods	Maximum foreign capital ownership of 49 percent
River and lake transportation for dangerous goods	Maximum foreign capital ownership of 49 percent
Weapons equipment industry	Capital ownership based on approval from Ministry of Defense
Horticulture	Maximum foreign capital ownership of 30 percent
Traditional medical products (for humans)	100 percent Domestic capital
Fish processing industry	100 percent Domestic capital
Wood based building products	100 percent Domestic capital
Coffee processing industry	100 percent Domestic capital
Rendang industry	100 percent Domestic capital
Ship industry	
• Outriggers; and	100 percent Domestic capital
• Traditional vessels	
Traditional handicrafts	100 percent Domestic capital
Traditional cosmetics	100 percent Domestic capital
Raw materials for traditional medicine (for humans)	100 percent Domestic capital
Batik industry	100 percent Domestic capital
Crackers and chips industry	100 percent Domestic capital
Hajj and Umrah activities	100 percent Domestic capital and must be Muslim

- Foreign investors can own as little as one percent and as much as 100 percent of the company (depending on the industry);
- Able to participate in government sponsored business tenders in the country;
- Ease of processing for business licenses;
- Ease of processing for work permits;
- Lower tax and import duties;
- Simple organization structure (requiring only one director, one commissioner, and two shareholders); and
- Ability to sponsor foreign executives.

There are no restrictions on where the PT PMA can set up in the country, but the business can only focus on one specific sector or area:

## Set up requirements for a foreign investment company

According to the Investment Coordinating Board Regulation No. 4 of 2021 (BKPM Reg 4/2021), investors looking to incorporate a PT PMA need to adhere to the following requirements:

- A minimum paid up capital of 10 billion rupiah (US\$696,000);
- Appointment of two shareholders (these can be foreign individuals or corporations - the percentage of local involvement will depend on the foreign ownership limitation based on the PIL);
- There must be minimum equity of 10 million rupiah (US\$601) per share;
- The appointment of at least one commissioner and a director (these can be held by foreign individuals); and
- The director will be responsible for running the day-to-day activities of the company.

## Set up process for a PT PMA

1. Reserve a company name with the Ministry of Law and Human Rights (which should not be similar to the name of other companies or contain vulgar language), Further the company name shall consist of 3 words and can be in English;
2. Establish a legal entity with the company's activities stated in the Deed of Establishment (this must be done with a local notary and the Deed of Establishment will have to be ratified by the Ministry of Law and Human Rights);
3. Obtain a taxpayer identification number from the local tax office and domicile letter from the district government (businesses establishing in Jakarta do not require a domicile letter);
4. Obtain a tax registration certificate through the tax office where the business is domiciled;
5. Obtain a Single Business Number (NIB) by applying through the Online Single Submission (OSS) system. The NIB applies as the company's import identification number, customs ID, and registration certificate. Further, the NIB will also automatically register your company

- 
- under the government's health and social security scheme; and
6. Some companies may need to apply for additional business licenses (such as for mining and fintech). Business licenses will now be issued based on the assessment of 'business risk level' determined by the scale of hazards a business can potentially create.

## Risk Based Business Licensing

To determine the risk level, the government will conduct a risk analysis of each application before deciding on issuing a business license. This will comprise of:

1. Identifying the relevant business activity;
2. Assessing the hazard level;
3. Assessing the potential occurrence of hazards;
4. Determining the risk level and business scale rating; and
5. Determining the type of business license.

Based on the aforementioned risk analysis, the businesses activities undertaken by the applicant company will be classified into one of the following risk-level types:

- Low-risk businesses;
- Medium-low risk businesses;
- Medium-high risk businesses; and
- High-risk businesses

Based on this risk-based approach, the lower the business risk, the simpler the business licensing requirements will be.

## What sectors are impacted?

The government will undertake the risk-analysis for business activities in the following sectors:

1. Maritime affairs and fisheries;
2. Agriculture;
3. The environment and forestry;
4. Energy and mineral resources;
5. Nuclear energy;
6. Industry;
7. Trading;
8. Public works and housing;
9. Transport;
10. Health, medicine, and food;

- 
11. Education and culture;
  12. Tourism;
  13. Religious affairs;
  14. Post, telecommunications, broadcasting, and electronic system, and transactions;
  15. Defense; and
  16. Employment.

## What are the requirements to obtain a business license?

The requirements vary depending on the risk level of the business with those in the high-risk categories requiring more permits and licenses.

The first stage of the process is obtaining a business registration number (Nomor Induk Berusaha – NIB) through the OSS system. To register for an NIB, businesses will need to provide the following information:

- Taxpayer number (Nomor Pokok Wajib Pajak – NPWP);
- Business activity code according to the KBLI;
- Business profile;
- The capital structure of the business; and
- The proposed location of the business.

Furthermore, the OSS system will be linked to all relevant ministries, such as the Ministry of Finance, the Ministry of Home Affairs, and the Ministry of Law and Human Rights.

### **Low-risk business activities**

Low-risk business activities are only required to obtain an NIB to commence their operations. In addition to serving as the formal identity of the business, the NIB also serves as a company's import identification number, as well as the number for registering with the national social insurance program.

### **Medium-low risk business activities**

Business activities in this category must obtain a NIB and Certificate of Standards before beginning operations. A Certificate of Standards is a statement of the fulfillment of certain business or product standards, which must be filled in through the OSS system.

The NIB allows the business to conduct activities from 'preparation to the 'commercial stage'.



The preparation stage includes:

- The procurement of tools or facilities;
- Land acquisition;
- Recruitment of manpower;
- Feasibility studies;
- Financing operations for the construction phase.

The commercial-stage includes:

- The production of goods/services;
- Distribution of goods/services;
- Marketing of goods/services; and
- Other commercial activities.

### **Medium-high risk business activities**

For medium-high risk business activities, companies will need to obtain a NIB and Certificate of Standards. However, the certificate will need to be verified by the central or regional government.

A company with a NIB and an 'unverified' Certificate of Standards are only permitted to conduct activities deemed in the preparation stage of operations.

Once the central or regional government is satisfied the business has fulfilled the specific business standards, they will issue the 'verified' certificate and the company can begin the commercial stage of operations.

### **High-risk business activities**

High-risk business activities will require a NIB and a license to operate. The license will be issued once the business has fulfilled certain conditions and verifications set out by the central or regional government, which may include an environmental impact analysis.

The NIB, however, allows the business to conduct activities in the preparation stage of operations.

Depending on the products or services being provided, businesses may have to obtain other supporting licenses to conduct commercial activities regardless of what risk level their activities are classified as.

An illustration of the licensing requirements can be seen below.

Business line	Business scale	Risk level	License	Issuing Authority
Wholesale distribution	Micro, small, medium, and large	Low	NIB	Governor, or Regent or Mayor
E-commerce operator	Large and medium	High	NIB and license	Ministry of Trade
Freight forwarding	All sizes	Medium-high	NIB and Certificate of Standards	Governor

## Individually Incorporated Companies

Government Regulation 8 of 2021 (GR 8/2021), an implementing regulation of the Omnibus Law, which makes amendments to the Company Law of 2007 by introducing the concept of “individually owned companies” as well as leaving the required minimum paid-up capital to the discretion of the founder(s) of the company.

Individually owned companies are a new type of company category in Indonesia that can be incorporated by a single individual.

Investors should note that GR 8/2021 only impacts Indonesian nationals and, as of 2021, foreign investors are required to have paid-up capital of 10 billion rupiah (US\$690,000) to incorporate a company in Indonesia.

### Minimum authorized capital required

GR 8/2021 stipulates that the amount of paid-up capital is to be agreed upon by the founder(s) of the company. However, this does not apply to companies in certain business fields that are obligated to have paid-up capital before starting operations.

Under the 2007 Company Law, companies needed to have paid-up capital of at least 50 million rupiah (US\$3,450).

Once the founder(s) of the company has agreed to the amount of authorized capital, they must pay at least 25 percent of the total paid-up capital, and the proof of payment must be electronically submitted to the Ministry of Law and Human Rights (MOLHR) within 60 days from the date of establishment.

## The introduction of individually owned companies

GR 8/2021 introduces a new category of companies, namely individually owned companies. Under this category, the company can be incorporated by a single individual, as the founder, who is at least 17 years of age.

Importantly, an individually owned company is only applicable to businesses categorized as micro or small enterprises.

GR 8/2021 states that businesses categorized as micro or small enterprises must fulfill the following capital or annual sales criteria.

Enterprise scale	Capital	Annual sales
Micro	Up to 1 billion rupiah (US\$69,000), excluding land and buildings	Up to 2 billion rupiah (US\$138,000)
Small	More than 1 billion rupiah (US\$69,000) and up to 5 billion rupiah (US\$345,000), excluding land and buildings	More than 2 billion rupiah (US\$138,000) and up to 15 billion rupiah (US\$1 million)

Further, the incorporation of an individually owned company does not require a deed of establishment, rather the individual only needs to fill out an establishment statement through the MOLHR website to obtain a registration certificate. The statement must include the following information:

- Name and domicile of the company;
- Purpose and business activities of the company;
- The amount of authorized, issued, and paid-up capital of the company;
- Number of shares of the company;
- Details of the founder of the company; and
- Tax number of the founder of the company.

The individually owned company must change its legal status to a limited liability company if the number of shareholders is more than one person, or the business no longer meets the criteria of a micro or small business.

Another important aspect with regards to an individually owned company, their liability is limited to the company's capital.

## Obligation to file financial statements

Financial statements of individually owned companies must be submitted within six months of the end of their accounting period. Failure to submit financial statements will result in administrative sanctions ranging from a written warning to the suspension of business activities.

## Representative office

Opening an RO is the fastest and simplest way of establishing a legal entity in the country. This set up is a temporary arrangement – ROs are not allowed to engage in any commercial activities, issue invoices, sign contracts, or earn any revenue. Foreign investors, however, can own 100 percent of this business entity and don't have to contribute the same paid-up capital required by PT PMAs.

The business activities of ROs are limited to market research activities, obtaining information on potential clients, developing trade contacts, and gathering information on regulations and laws. There are four types of ROs, which we explore below.

### General representative office (KPPA)

A KPPA is a general RO structure, ideal for investors who are still exploring opportunities in Indonesia. The KPPA has two main responsibilities:

- Represent, supervise, and manage its parent company in Indonesia; and
- Prepare for the establishment of a limited liability company for the parent company.

The KPPA must be incorporated in the capital of any Indonesian province and must be located in an office building. The KPPA permit is valid for an initial three years and can be extended twice for one year each time.

### Representative office for a foreign trading company (KP3A)

A KP3A is similar to a KPPA but is more ideally suited for manufacturers or product owners looking to establish a network of distributors in the country. The KP3A is divided into the following categories:

- Can act as a buying/or selling agent for the parent company, performing liaising or promotional activities; or
- Act as a manufacturing agent with its activities also limited to market research and liaising.

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Unlike a KPPA, the KP3A does not have to be established in the capital city of a province; they can set up in any district or regency in the country.

Foreign investors will also need to obtain a Foreign Company Trade Representative license (SIUP3A), which can be done through the OSS system of the BKPM. The KP3A permit is limited to two months (temporary license) to a maximum of one year (permanent license).

## Representative office for a foreign construction company (BUJKA)

A BUJKA is an RO for foreign construction companies, through a joint operation with a local construction company and unlike the KPPA and KP3A entities, a BUJKA can undertake projects in Indonesia through a joint venture with a local construction company. The BUJKA license is valid for three years and the local partner must be a limited liability company.

Applicants must prove to the National Construction Services Development Board (LPJK) that they are classified as a 'large' construction company, and they must have a service business license issued by the Department of Public Works.

## Representative office for a foreign oil and gas company (KPPA MIGAS)

Foreign oil companies can set up a representative office through a KPPA MIGAS permit. The license is valid for three years and applicants will need to seek prior approval from the BKPM.

## General set up requirements for ROs

Foreign investors looking to open an RO will need to fulfil the following requirements:

- Register through the OSS online portal;
- The parent company's Articles of Association legalized by a notary and the Indonesian Embassy of the parent company's country of origin;
- Letter of Appointment by the Indonesian Embassy located in the parent company's country of origin;
- Latest financial statements of the parent company;
- Letter of intent legalized by a notary and the Indonesian Embassy located in the parent company's country of origin;
- Certificates demonstrating competency in the relevant industry or sub-sector;
- Recommendation letter from the Ministry of Energy and Mineral Resources (for KPPA MIGAS applicants);
- Lease agreements;
- Must be located in the capital of a province (unless it is a KP3A applicant); and
- A letter that states the RO will not engage in any commercial activities in Indonesia.



## Laos

Limited liability companies and representative offices are the most efficient options available for foreign investors looking to establish a business entity in the country.

Laos is notorious for being one of the most difficult countries to do business although the government has pushed for regulatory reforms to ease doing business in the country. Several industries are closed to foreign investment, these include fisheries, construction, and the restaurant sectors.

### Corporation

This structure is the most used by foreign investors in Laos and requires a minimum of two shareholders and one director to operate. The liability of the shareholders is limited to the share capital that they invested.

The Ministry of Industry has abolished the minimum registered requirements for foreign investors; however, this may not cover industries that have specific regulations regarding the minimum capital requirements.

### Branch office

The scope of business of a foreign branch office in Laos is defined by the parent company, but they are limited to operating in specific sectors – insurance, foreign banks, airline companies, and financial institutions.

### Representative office

A representative office (RO) can be established in Laos for a minimum of one year and it can be extended twice, one year each time. The RO is prohibited from earning an income in Laos.

The ROs activities are limited to:

- Information gathering and market research;
- Monitor the implementation of contracts between the parent company; or
- Coordinate with the parent company to facilitate its business activities in the country.

### Incorporation

To register a business in Laos, investors must first know the LSIC code - the classification - of the business activity they intend for the company to conduct in the country. The LSIC business

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activity code can be found on the Ministry of Industry and Commerce website. A company can register multiple business activities.

Note that some business activities are restricted and require additional assessment during the business registration procedure, which could extend the processing time. The Ministry of Industry and Commerce made amendments to the business registration process in February 2018, reducing the average time to register a legal entity from 174 days to 17 days.

The process is as follows:

1. Enterprise registration – the investors apply for an enterprise registration certificate (ERC) at the Ministry of Industry. The applicant will receive a tax identification number and will be registered for VAT simultaneously with the ERC. The process takes 10 working days.
2. Company seal – the next step is to obtain the company seal, which can be obtained from the Ministry of Public Security. This process takes five working days.
3. Social security – the investor applies for social security registration at the National Social Security Fund. This process takes two working days.
4. Security Fund. This process takes two working days.

Investors should note that this process relates to registering the legal entity and does not include business operating license schemes.

## Documentation requirements

Among the documents the company will need to register in Laos are:

- Articles of association;
- Bank statements demonstrating the financial viability of the investor;
- Lease agreement (the company will need to lease a premise before registering; and
- Business plan.



## Malaysia

Foreign investors looking to establish a business entity in Malaysia must register under either the Registration of Business Act 1956 (ROBA 1956), Companies Act 2016 (CA 2016), or the Limited Liability Partnerships Act 2012.

There are seven types of business entities in Malaysia:

- Limited liability partnerships;
- Partnerships;
- Sole proprietorship;
- Company limited by shares;

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- Company limited by guarantee;
  - Unlimited company; and
  - Branch of a foreign company.

Foreign investors are only allowed to establish a company limited by shares (Sdn Bhd) or a branch office unless the persons has permanent residence status, in which case they are eligible to start a partnership or a sole proprietorship.

## Corporation

This type of business entity is more well known as Sendirian Berhad (private limited company) or Berhad (public limited company) and is the most common type of business entity in Malaysia.

A foreign investor can own the majority shares (100 percent) of a private limited company, depending on the industry the business is engaging in. The CA 2016 restricts the members of a private limited company to 50 and restricts the rights of members to transfer their shares.

There is a flat fee of 1,000 ringgit (US\$235) to incorporate a company limited by shares.

## Requirements for incorporation

Foreign investors can register their business online through the MyCoLD portal, which is managed by the Companies Commission of Malaysia (SSM).

Firstly, the applicant needs to conduct a name search on the portal to check the availability of their proposed company name.

The company requires a minimum of one shareholder, which can be a foreigner depending on the industry, in which case a local shareholder is also required. There is also a requirement to appoint a director who needs to be a minimum of 18 years of age and resides in Malaysia.

If the director does not reside in Malaysia, then a local director will satisfy this legal requirement.

## Branch office

Establishing a branch office is ideal for foreign companies operating in Malaysia on a short-term basis.

The business activities of the branch office must be the same as that of its parent company and must have at least one person residing in Malaysia to act as an authorized agent to set up the company. The branch office is forbidden to carry out wholesale and retail trade businesses in the country as foreigners must establish a company limited by shares to undertake these types of

businesses. The agent will be personally liable for any penalties imposed on the branch office.

The parent company must pay a registration fee to establish a branch office, which is dependent on its share capital.

## Registration Fees

In the event the branch office does not prescribe a any share capital, then a flat rate of 70,000 ringgit (US\$6,500) will be imposed.

The branch office is also taxed as a non-resident and so a 25 percent tax on profits attributed to the branch is applicable. Further, a withholding tax of 10+3 percent is applicable on payments made to the branch office for businesses conducted in Malaysia.

Share capital	Fees
Up to 1 million ringgit (US\$236,000)	5,000 ringgit (US\$1,182)
More than 1 million and up to 10 million ringgit (US\$236,000 – US\$2.36 million)	20,000 ringgit (US\$4,728)
More than 10 million and up to 50 million ringgit (US\$2.35 million – US\$11.7 million)	40,000 ringgit (US\$9,457)
More than 50 million and up to 100 million ringgit (US\$11.8 million – US\$23.6 million)	60,000 ringgit (US\$14,185)

In the event the branch office does not prescribe a any share capital, then a flat rate of 70,000 ringgit (US\$6,500) will be imposed.

The branch office is also taxed as a non-resident and so a 25 percent tax on profits attributed to the branch is applicable. Further, a withholding tax of 10+3 percent is applicable on payments made to the branch office for businesses conducted in Malaysia.

## Representative office

A foreign company can establish a representative office (RO) in Malaysia for a minimum of three years and is only a representative of the parent company.

The RO is not a permanent business entity and is thus not governed by the regulations under CA 2016 and is not permitted to earn any revenue in the country. Instead, the RO is permitted to conduct market research, collect information on relevant investment opportunities, or promote the export and import of goods and services.

  
 **Myanmar**

Prior to establishing a business entity in Myanmar, investors are advised to research the Myanmar Companies Law (MCL) 2017, which regulates the country's corporate framework.

### Limited liability entity

Under the MCL, it is possible to set up a wholly foreign-owned company, in the form of a private or public company limited by shares. Businesses in which foreign ownership does not exceed 35 percent are considered local companies and are thus permitted to engage in sectors that are closed to foreign investors.

A private company may have a maximum of 50 members (not including employees), whereas a public company can have an unlimited number of members. A private company only requires one shareholder to be incorporated in addition to one director, whether a Myanmar or foreign citizen (they need to be a resident in the country). A public company, however, must have at least three directors, one of whom must be a citizen and 'ordinary resident' of Myanmar (defined as a person with permanent residency or resides in Myanmar for at least 183 days in each 12-month period).

There is no minimum capital requirement unless the company engages in the services or manufacturing industries in which case the company needs to invest US\$50,000 and US\$150,000 respectively.

### Joint venture with a local partner

Under this structure, the company requires two shareholders (one foreign and one local) and US\$50,000 in capital requirement. Additionally, the foreign investors can own up to 80 percent of the shares within this business entity.

### Branch office

The MCL allows for the establishment of a foreign branch office but the parent company will be liable for its activities. The branch office needs one shareholder to operate in addition to an authorized company representative in the country, who can also be a foreigner.

The parent company will need to also inject US\$50,000 as a minimum capital requirement and the branch will be subject to a 35 percent corporate income tax rate as opposed to the 25 percent rate applicable to companies incorporated in Myanmar.

## Representative office

The representative office (RO) can be foreign owned, requiring only one shareholder and one company representative in the country. The RO cannot operate any commercial activities and can only engage in market research or liaison activities on behalf of the parent company.

There is, however, a minimum US\$50,000 capital requirement.

## Incorporation process

New companies can be registered via the Myanmar Companies Online (MyCO) website. The first step to incorporation is checking the availability of a company name on the website of the Directorate of Investment and Company Administration (DICA) website. During this process, the company should submit the details of its directors.

Once a name has been approved, the applicant can obtain the company registration forms at DICA. There are no fees to incorporate a new company, provided the documents are submitted electronically. A service fee of up to 2.5 million kyats (US\$1,395) will be charged for documents submitted in hard copy to the DICA office.

To register a branch office, applicants must pay 500,000 kyats (US\$279) in stamp duty and a registration fee through the One Stop Service (OSS) or to the Inland Revenue Service. At this point the applicant can obtain a temporary incorporation certificate and permit to trade if desired.

After the registration forms are completed and signed, all government fees are paid and evidence of the transfer of any minimum capital is provided (if required), the applicant will receive the company incorporation certificate from DICA.



## Philippines

There are a range of entry modes to choose from when investing in the Philippines. Each one is governed by different rules and, as such, each is suitable for different functions and business models.

There are three main methods of entries, these are:

- Corporations;
- Branch office; and
- Representative office (RO).

## Corporation

One option to enter the Philippines is establishing as a corporation. This means registering a new legal entity with the Securities and Exchange Commission (SEC).

The structure of a corporation is such that the individual assets of the owners are legally separate from those of the company. Corporations come in two forms:

- Filipino corporation – minimum of 60 percent Filipino equity ownership; or
- Foreign-owned domestic corporation – greater than 40 percent foreign equity ownership.

Most sectors are open to foreign ownership although foreign investors are advised to check the country's Negative Investment List. Foreign-owned domestic corporations serving the Filipino market require a minimum of five shareholders and at least US\$200,000 of paid-in capital. The paid-in capital can be reduced to US\$100,000 if the corporation is involved in advanced technology or employs 50 local employees.

Foreign-owned domestic corporations are subject to 25 percent corporate income tax (CIT) until 2022 and 12 percent VAT on local sales. After 2022, the CIT rate will drop by one percent every year until it reaches 20 percent in 2027. Foreign corporations can register for numerous tax incentives with the Philippine Economic Zone Authority.

If the corporation is an 'export market enterprise'– defined as exporting at least 60 percent of its goods or services – the required capital is reduced significantly to PHP5,000 (US\$100).

## Set up requirements

The applicant will need to adhere to the following steps in their registration process:

- Submit the company name;
- Submit the company's articles of association;
- Submit bank certificate showing paid-up capital;
- Registration with the Bureau of Internal Revenue;
- Procurement of business permits and licenses; and
- Registration with employee-related government agencies.

As part of the corporate structure, corporations require:

- President – acts as a signatory of the company and they must also be a director and shareholder of the company;
- Corporate secretary – has to be a Filipino citizen and is responsible for administrative tasks such as preserving records and taking minutes of meetings; and
- Treasurer – responsible for the company's financial matters, such as financial statements and annual reports.

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## Branch office

A branch office is a profit-oriented subsidiary of a foreign enterprise that engages in the activities of its parent company in the Philippines. This is the typical structure for business process outsourcing, such as call centers or back offices for multinational firms.

Similar to corporations, the capital requirements are US\$200,000 for domestic market serving enterprises and PHP5,000 (US\$100) for export-oriented companies. The taxation of branch offices is also similar, with 25 percent corporate income tax until 2022 and 12 percent VAT on local sales.

Branch offices also have to pay a 15 percent profit remittance tax on repatriation of profits to the parent company. To establish the branch office, the applicant will first need to complete the application form to the SEC, signed by any member of the board of directors. The next step is to pay the SEC registration and deposit the US\$200,000 to a Treasurer-in-Trust account, which has been opened on behalf of the branch office.

The final steps will be to authenticate the company's latest financial statements.

## Representative office

An RO differs from a branch office in that it is not legally allowed to derive income. The minimum paid-in capital for a representative office is a US\$30,000 remittance from the parent company, which must be used for operational expenses.

### Set up requirements

To open an RO, the parent company will need to submit the following documents to the SEC:

- The parent company's financial statements;
- Details of the person managing the RO office; and
- The parent company's article of associations.



## Singapore

Foreign investors can set up a variety of business structures in Singapore for their investments. Establishing a subsidiary, branch office, or representative office are some of the most popular options.

Investors need to assess their specific business needs before deciding on a corporate structure to operate from. Those entering Asia for the first time, for instance, may want to set up a low-risk, exploratory presence in the form of a representative office, while those looking to use Singapore as a springboard to access the ASEAN markets may need to be more strategic by setting up a branch office or subsidiary company.

## Private company limited by shares

A private company limited by shares, also known as a private limited company, is by far the preferred structure among small and medium-sized (SME) foreign companies for setting up a local business presence in Singapore.

A private limited company is a separate legal entity from its directors, shareholders, and officers of the company; this means that the foreign holding company cannot be held for the liabilities of its subsidiary. In addition, the holding company's liability is limited to the share capital subscribed in its subsidiary. A private limited company can benefit from tax incentives available to local companies.

As a private limited company can be wholly owned by a foreign individual and/or corporate investor, this legal entity can be established as a regional holding company or subsidiary of the foreign holding company. Having a Singapore incorporated company increases the advantage of gaining access to the wider Asian market and ASEAN Free Trade Zones, as well as FTAs through ASEAN, which include ASEAN-Hong Kong, ASEAN-India, and ASEAN-China.

### Key requirements for setting up a private company limited by shares

#### 1. Reservation of company name

- The company name must be approved by the Accounting and Corporate Regulatory Authority (ACRA) prior to the company registration process;
- Once a name is selected, the name application shall be submitted via ACRA Bizfile for approval, which may be rejected if the name is identical, similar, or phonetically similar to a company that has already been registered; and
- The name application costs S\$15 (US\$11.1), which will be reserved for 120 days upon approval.

#### 2. Appointment of Company Officers

The officers of a company include the following:

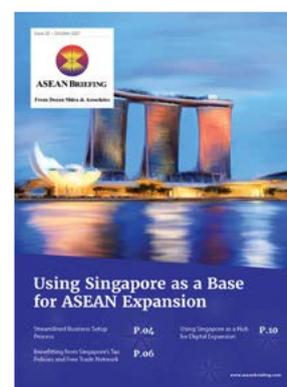
- Director;
  - » The appointment of at least one director who is either a Singaporean citizen, permanent resident, EntrePass or Employment Pass holder; and
  - » The director needs to be at least 18-years of age and must not have a history of misconduct or bankruptcy in their work history.
- Auditor (to be appointed within three months of incorporation unless exempted from audit requirements);
- Company secretary (to be appointed within six months of incorporation); and
- Shareholders, (the minimum issued, and paid-up capital is S\$1 (US\$0.74)).

#### 3. Registered address

- This must be a commercial business address in Singapore.



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*ASEAN Briefing Magazine*  
October, 2021

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## Branch office

Foreign companies can establish branch offices to conduct any type of business activity that falls within the scope of the parent company.

Branch offices are not eligible for the tax exemptions and incentives available to local companies as ultimate control of the branch remains vested in the overseas parent company. As such, branch offices are regarded as an extension of the foreign holding company and is therefore taxed as a non-tax resident at the corporate tax rate of 17 percent.

The name of the branch office must be the same as the parent company and as a legal extension of the parent company. The parent company must bear ultimate legal responsibility for all liabilities and be registered with ACRA, which is responsible for the monitoring of new companies in Singapore. Because of this liability, many foreign companies choose to establish a subsidiary or private limited company rather than branch offices.

### Key requirements for setting up of branch offices

#### 1. Reservation of name of branch office

- The name of the branch office must be the same as the foreign parent company;
- The name of the branch office must be approved by the ACRA prior to the branch office registration process;
- Once a name is selected, the name application shall be submitted via ACRA Bizfile for approval, which may be rejected if the name is identical, similar, or phonetically similar to a company that has already been registered; and
- The name application costs S\$15 (US\$10), which will be reserved for 120 days upon approval.

#### 2. Appointment of company officers

The officers of a company include the following:

- **Director**
  - » The board of directors of the Singapore branch office must be the same as the board of directors on the foreign parent company; and
  - » The director needs to be at least 18-years of age and must not have a history of misconduct or bankruptcy in their work history.
- **Authorized representative**
  - » The branch office must have at least one authorized representative who is ordinarily resident in Singapore.

#### 3. Registered address

- This must be a commercial business address in Singapore.

Investors looking to set up branch offices must ensure its activities do not go outside the scope of the parent company.



The parent company will bear all the liabilities of its branch office as it is viewed as a legal extension of the parent company. This means they are also subject to Singaporean taxes and are not eligible for local tax incentives and exemptions.

## Representative office

A representative office (RO) is a short-term, temporary arrangement with a limited purpose; however, it must be established for a maximum of three years, of which the RO status is subject to evaluation by Enterprise Singapore, the government agency under the Ministry of Trade and Industry, before the RO can be further renewed on an annual basis.

This set up is an ideal choice for foreign investors who are still researching their investment options before setting up a fully-fledged office in Singapore. Companies looking to set up an RO must have sales turnover of at least US\$250,000 and must be represented by staff from their own HQ or a Singaporean citizen.

ROs can be staffed by a maximum of five individuals, with the parent company bearing liability for the activities of the RO and is responsible for financing its operations. The RO is confined to activities set out by Enterprise Singapore, which include:

- Gathering of information on markets and potential clients;
- Carrying out research to ascertain product/service information;
- Developing trade contacts and manage product enquiries;
- Participating in trade shows and exhibitions; and
- Gathering information on regulatory requirements for the set-up of a permanent entity.

### Key requirements for setting up of a representative office

As a temporary administrative office, the RO cannot engage in profit-yielding business activities and can only participate in information gathering or market research-based activities.

Investors wishing to establish a RO in Singapore must ensure:

- The parent company has been established for more than three years;
- The parent company has incurred an annual sales turnover of more than US\$250,000;
- The foreign chief representative is from its headquarters; alternatively, the RO may appoint a Singapore citizen to fulfil the role of the chief representative; and
- The RO does not hire more than five local employees as support staff

## Variable Capital Companies

In January 2020, the Monetary Authority of Singapore (MAS) and the Accounting and Corporate Regulatory Authority (ACRA) launched the Variable Capital Company (VCC), a new innovative corporate structure for all types of collective investment schemes (investment funds) in Singapore.

The VCC is regulated under its own legal framework through the Variable Capital Companies Act and offers more operational flexibility compared to investment fund structures currently available in the country through trusts, limited partnerships, or private limited companies.

This means fund managers can establish investment funds across both traditional and alternative strategies and as open-ended or closed-end fund strategies.

Open-ended funds are offered through fund companies that sell shares directly to investors, allowing them to enter and exit according to their convenience. There is also no limit on the number of shares they can issue, if there is an appetite for the fund.

Close-ended investments, however, are overseen by a fund manager or brokerage firm and are listed on the stock exchange. There are a fixed number of shares that are issued.

The government hopes this flexibility will attract more investment funds to be domiciled in Singapore and bring the country to the forefront of the global investment services industry.

### What are the requirements of a VCC?

There are several key components of the VCC:

- The VCC must have at least three directors who are Singaporean residents. At least one director must be a representative of the fund manager;
- The VCC will require a Singapore regulated and licensed fund manager or it can use a Singapore licensed bank to be the fund manager. The entity cannot be self-managed;
- The VCC can have a single shareholder or hold a single asset;
- The requirements for investment funds listed under the Existing Securities and Futures Act (SFA) will apply to VCC's;
- The VCC must have a registered office in Singapore and appoint a Singapore-based secretary; and
- It must be audited by a Singapore-based auditor and present its financial statements as per the International Financial Reporting Standards (IFRS) or US GAAP.

## What are the key benefits of using the VCC structure?

There are several benefits a VCC structure has over current collective investment schemes in Singapore.

- The VCC can be used as a standalone fund (comprising of a single investment portfolio) or as an umbrella entity with various sub-funds allowing for the segregation of portfolios and liabilities. Having multiple funds in a single VCC can improve cost efficiencies.
- The VCC capital will always be equal to its net assets. This is because the VCC's shares are only created when investments are made. This provides flexibility in the distribution and reduction of capital as dividends can be paid out of capital, easing the ability of fund managers to meet dividend payment obligations.
- Fund managers can easily re-domicile existing overseas investment funds by transferring their registration as a Singapore VCC.

There are also several tax benefits for VCC's. These include:

- A VCC is not burdened by the same capital requirements of an open-end fund in Singapore and has access to the country's more than 80 tax treaties.
- An umbrella VCC will only need to file a single corporate income tax return (CIT) to the Inland Revenue Authority of Singapore (IRAS).
- Income from a VCC can be exempt from tax if it qualifies for the government's Enhanced Tier Fund (ETF) Scheme. There are two criteria for this:
  - » The VCC must have a minimum fund size of S\$50 million (US\$36 million); and
  - » Must have a local business spend of S\$200,000 (US\$148,558).
- The VCC could qualify for the tax exemptions for startups scheme (SUTE) and obtain a 75 percent tax exemption on the first S\$100,000 (US\$73,000) of chargeable income during the first consecutive three years. The next S\$100,000 (US\$74,272) of chargeable income can receive a 50 percent tax exemption.
- The entity can recover goods and services tax (GST) on expenses occurred in Singapore.

## Thailand

The government recognizes two types of limited companies – private limited companies and public limited companies. The first is governed by the Civil and Commercial Code (CCC) and the latter is governed by the Public Limited Company Act.

In Thailand, a company is considered to be foreign-owned if more than half of its shares are owned by non-Thai individuals. Investors should then refer to the Foreign Business Act (FBA), the main law which dictates the sectors that 'foreign' companies are allowed or forbidden to engage with.

The FBA governs private limited companies, and as such, foreign investors can only own 49 percent of the company.



## Private limited company

Establishing a private limited company is the preferred structure for foreign investors looking to have a legal presence in the country.

For foreign investors to achieve 100 percent ownership, they need to obtain:

- A Foreign Business License;
- Obtain promotion from the Board of Investment (BOI); or
- Register through the Treaty of Amity (for US citizens only).

### Set up requirements

All limited companies are required to have shareholders, directors, and promoters. Company promoters are responsible for registering the company with the Ministry of Commerce (MOC) and are the ones that sign documentation during the registration process.

There must also be a minimum of three promoters for a private limited company, and 15 for public companies. Each promoter must be among the company's initial shareholder upon registration.

The process for company registration can be completed within one business day. Initially, a promoter will need to register a company name with the Department of Business Development (DBD). The name should not be identical or resemble the name of a pre-existing company.

The promoter should provide the company name with two alternative names, and once approved, the name is reserved for 30 days.

### Registering the Memorandum of Association

After registering a name, the company will need to submit its Memorandum of Association (MOA) to the DBD. The MOA must contain:

- Name of the proposed company;
- Address;
- The company's proposed objectives;
- The declaration that the liability of the shareholders will be limited; and
- The number of shares prescribed by each promoter.

## Convening a statutory meeting

The statutory meeting is called to do the following:

- Adopt the Articles of Association of the company;
- Appointment of directors and auditors;
- Ratification of the business activities; and
- Establishment of shares.

## Company registration

Within three months of the statutory meeting, the directors must submit the application to the MOC. The company registration fee is 5,500 baht (US\$161) per million baht of registered capital, up to 250,000 baht (US\$8,000).

## Tax registration

Once the company is registered, it must register for a corporate tax ID card from the Revenue Department within 60 days of incorporation. Businesses that have annual turnover of 1.8 million baht (US\$58,000) must register for VAT within 30 days after reaching the 1.8 million baht ceiling.

## Representative office

Before launching a registered company in Thailand, a foreign company may test the size of the Thai market by establishing a limited presence in the country through a representative office (RO).

The function of an RO is limited to rendering non-revenue-raising services on behalf of its head office. A representative office cannot generate income from its business activities and is not permitted to receive any purchase order, or sign sale and purchase agreement, or negotiate business with any person. It can only engage in a limited range of activities, such as sourcing of local goods or services in Thailand, reporting local business development and activities to its head office, and engaging with clients on behalf of its head office.

To establish an RO, investors will need to:

- Register with the Ministry of Commerce (Department of Business Development), and obtain a 13-digit registration number;
- Obtain a corporate tax ID number, even though the RO is not subject to taxation in Thailand;

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- Remit a minimum of 3 million baht (US\$95,000) from the RO's head office into Thailand to cover future expenses;
  - Obtain a work permit for any foreign employee; and
  - Have at least one representative present to handle the day-to-day management of the RO (must be a Thai citizen).

## Branch office

A foreign company may use a branch office (BO) to establish its presence in Thailand. Legally, a BO holds the same position as its head office and is considered as having a foreign status.

As a result, its business activities are restricted and subject to conditions and requirements under the FBA. Further, the head office and other branches are jointly held responsible for all liabilities of the BO.

Further, unlike an RO, a BO entity can earn an income in Thailand. Due to this, a BO needs to apply for a business license and apply for a tax number.

The BO will also need to remit a minimum of 3 million baht (US\$95,000) and obtain a VAT registration number. Any income earned from the branch activities will be subject to Thai corporate income tax laws.

## Civil and commercial code amendments to ease doing business

In June 2020, Thailand's government approved new amendments to the Civil and Commercial Code (CCC) to simplify the process of setting up and conducting business in the country. It is anticipated that the proposed amendments will become law towards the end of 2020 or the beginning of 2021.

The changes to the CCC relate to simplifying the company formation process, new merger provisions, and a set timeline for the payment of dividends, among other amendments.

The amended CCC is part of the government's efforts of ongoing regulatory reforms that provide additional clarity to doing business in the country.

## Streamlining the company formation process

Previously, a minimum of three Thai citizens was required to form a company and they could become the initial shareholders of the business.

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With the amendments to the CCC, this has been reduced to just two, which is a positive move for foreign investors, many of whom find it difficult to find suitable promoters.

### **Court order dissolution**

The CCC provides that a company can be dissolved by court order if the number of shareholders is less than three. This has been changed to reflect the aforementioned amendments on the number of promoters needed to establish a company in Thailand.

## Merger provisions

Before the amendments, the CCC only recognized the concept of amalgamation of companies as opposed to mergers.

Under this concept, two or more companies are combined, along with their assets and liabilities, to form a newly formed business entity. Through a merger process, however, two companies are merged into a single entity (A+B), with the remaining company (A or B) being liquidated.

The amended CCC will now recognize the concept of a merger, giving companies the choice of either an amalgamation or a merger.

### **Business registration**

Company registration for private businesses can now be done at any approved Department of Business Development office, regardless of the location. The Ministry of Commerce is set to also waive registration fees for incorporation.



## Vietnam

Due to the dynamism of Vietnam's economy in recent years, the country has become an appealing destination for foreign investors. Investors have a number of options for entry into the Vietnamese market.

## Wholly foreign-owned enterprise

A wholly foreign-owned enterprises (WFOE) in Vietnam can operate under the following structure:

- Joint stock companies; and
- Limited liability companies.



Limited liability companies (LLC) are the most common form of investment for foreign investors due to their reduced liability and capital requirements. LLCs can be broken down into single member LLCs, where there will only be one owner, and multiple member LLCs, where there will be more than one stakeholder. These owners can be private individuals or companies, depending on the requirements of a given investor. The setup time for a WFOE ranges between two to four months on average.

## Set up requirements

While Vietnam is a highly attractive investment destination for foreign investors, it still has a complex legal process for establishing a company.

The first step in the Vietnamese corporate establishment process is an application for an Investment Registration Certificate (IRC). This is required of all WFOE investment projects and establishes the right of the foreign enterprise to invest within Vietnam.

To apply, an investor must meet the following requirements:

- Application for implementation of investment project (this should include details of the project in Vietnam);
- Proposal of investment project (should include the details of the investment project, including lease agreements or land use needs); and
- Financial statements (to be provided for the last two years of a company's operation; additional information may be required to prove financial capacity).

The next step is applying for the enterprise registration certificate (ERC).

The ERC is required for all projects that seek to set up new entities within Vietnam. When obtained, the ERC will be accompanied by a number that will double as the tax registration number of the entity. As part of the application process, the following information should be prepared:

Application for enterprise registration;

- Company charter;
- List of all board members; and
- List of legal representatives.

Once the IRC and ERC have been issued, additional steps have to be taken to complete the procedure and start business operations. This includes:

- Seal carving;
- Bank account opening;
- Labor registration; and
- Business license tax payment.

## Representative office

A representative office (RO) offers a low-cost entry for companies seeking to gain a better understanding of the Vietnamese market. As such, this option is among the most common for first-time entrants to the Vietnamese market and often precedes a larger presence within the country.

### What are ROs permitted to do?

ROs are permitted to engage in the following activities:

- Conducting market research;
- Acting as a liaison office for its parent company;
- Promoting the activities of its head office through meetings, and other activities, that leads to a business at later stages.

Representatives offices are dependent on their parent company and are not allowed to generate their profits or enter directly into contracts. They are also not allowed to issue invoices.

### Set up requirements

Pre-licensing checklist for setting up an RO:

1. File an application for setting up an RO with company chop or seal;
2. Appointment letter of Chief of RO with identification documents and company seal;
3. Power of attorney in favor of consultant to submit the application dossier;
4. Certificate of Incorporation for the Company and/or Business Registration Certificate of the Company;
5. Audited financial report of the company for the latest fiscal year;
6. Memorandum of Understanding (MoU) of leasing office or leasing contract; and
7. Documents providing legal rights of landlord regarding the right of the leasing office.

For steps 1 to 6, the foreign entity would require one notarized and consularized copy of each document and a translated copy in Vietnamese by a Vietnamese competent authority.

A signed leasing contract is also required before registering an RO in Vietnam.

Post-licensing checklist for setting up an RO:

8. Make a seal for the RO;
  - License on the establishment of RO; and
  - Passport of Chief of RO if a foreigner or passport/ID card if Chief is Vietnamese.

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9. Register a tax code for the RO;
    - Declaration to register a tax code;
    - Power of attorney;
    - Certificate of seal registration; and
    - Certificate of RO in Vietnam.
  10. Open a bank account of RO;
    - License on the establishment of RO;
    - Certificate of seal registration;
    - Certificate of tax code registration; and
    - Letter of authorization appointing the authorized signatories of the bank accounts.
  11. Announcement of the establishment of RO of Company.

For steps 8 to 10, notarized and translated documents will be required to complete the process.

## How long does it take to set up an RO?

ROs can be set up in between six to eight weeks. We recommend hiring a professional service advisor to deal with the myriad of laws and procedures.

Given the absence of in-country revenue and associated licensing requirements, the setup process for this option does not entail as many bureaucratic procedures as others.

An RO license is valid for five years but can be extended for another five years.

## What comes next?

Hiring, tax, and reporting. There is no cap on the number of local and expatriate employees that a representative office can hire as long as their employment is properly documented.

All expatriate hires, including the chief representative, are required to have a work permit. ROs can hire staff directly or use the assistance of recruiting agencies. An RO is not subject to Vietnamese corporate income tax (CIT). However, it is responsible for declaring its employees' personal income tax (PIT).

To determine payable tax, ROs have to undertake a tax audit, which checks all revenues and expenses during the tax term to establish grounds for declaring and paying tax.

The RO also has to send reports of its activities of the previous year to the Department of Industry and Trade before January 30 of each year.

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## Branch office

A branch office (BO) can conduct business activities in Vietnam with the parent company's business scope. To set up a BO, a parent company must have conducted business in its home country for at least five years. BOs are limited to certain types of service businesses, such as finance and banking. BOs can hire staff directly, make it easier to do contracts between parent company and Vietnamese companies, and serve in similar ways to a liaison office. BOs are permitted to engage in the following activities:

- Rent offices;
- Lease or purchase the equipment and facilities required for operations;
- Recruit local and foreign employees;
- Remit profits abroad;
- Purchase and sell goods and commercial activities per licensing; and
- Set up accounting, marketing, and HR departments to represent the parent company.

The BO will need to obtain an establishment license and have a seal with the name of the parent company. The BO will also need to appoint a branch manager who is a Vietnam resident. Foreign companies may appoint a manager from their countries of origin; however, this employee must get a Vietnam work permit to be hired as a BO manager. The Department of Industry and Trade approves the registration of the BO after the company submits all the documents, with the process taking 20 working days.

## Public private partnership

A public private partnership (PPP) entails a partnership between a foreign or domestic enterprise and the government for the completion of key infrastructure projects. Vietnamese authorities are aggressively pursuing PPPs for a variety of infrastructure projects as a means of filling gaps left by the reduced role of state-owned enterprise, rising population, and increasing urbanization. The five types of PPPs are: Build-Transfer-Operate (BTO), Build Transfer (BT), Build- Operate-Transfer (BOT), Build-Own-Operate (BOO), and Build, Transfer and Lease (BTL).



# ASEAN's Free Trade Agreements

ASEAN has ratified several free trade agreements (FTAs). ASEAN has entered into a number of free trade agreements with other Asian nations that are now radically altering the global sourcing and manufacturing landscape. It has a treaty with China, for example, that has effectively done away with reduced tariffs on nearly 8,000 product categories, or 90 percent of imported goods, to zero.

These FTAs are:

## ASEAN Free Trade Area

The ASEAN Free Trade Area (AFTA) was signed in 1992 with the aim to be a catalyst to help ASEAN become a production base for global markets. Under the agreement, goods originating in ASEAN are applied a 0-5 percent tariff rate

## ASEAN-Australia and New Zealand FTA

The ASEAN-Australia and New Zealand Free Trade Area (AANZFTA) came into force in January 2010. Through the AANZFTA, 90 percent of tariffs were eliminated and barriers to trade in services have been progressively liberalized following increased market access

## ASEAN-People's Republic of China FTA

This agreement was signed in 2002 and by 2004, Indonesian exports were open to the Chinese market. Some 90 percent of tariffs on imported goods have been reduced or eliminated.

## ASEAN-Hong Kong, China FTA (AHKFTA)

This trade agreement came into force in June 2019. Indonesia will eliminate duties for 75 percent of its products within 10 years and another 10 percent of its tariff lines within 14 years.

## ASEAN-India FTA

The ASEAN-India Free Trade Area (AIFTA) was signed in 2009, resulting in one of the world's largest FTAs. The agreement has seen tariffs eliminated for 90 percent of products traded between the two regions, which includes for products such as palm oil, pepper, tea, and coffee.

## ASEAN-Japan Comprehensive Economic Partnership

The ASEAN-Japan Comprehensive Economic Partnership (AJCEP) was enforced in 2008. AJCEP liberalizes trade in goods between Japan and the bloc, particularly in areas such as intellectual property, agriculture, fisheries, and forestry.



## ASEAN-Republic of Korea Comprehensive Economic Cooperation Agreement

The ASEAN-Republic of Korea Free Trade Agreement (AKFTA) was signed in 2005 and has eliminated more than 90 percent of tariffs between ASEAN and the Republic of Korea. Additionally, the agreement has also liberalized the investment process and there has been enhanced cooperation in trade services.

## Regional Comprehensive Economic Partnership

The Regional Comprehensive Economic Partnership (RCEP) was signed on November 15, 2020 and includes all ten ASEAN countries, along with Australia, China, Japan, New Zealand, and South Korea. According to estimates by International economics professors at Johns Hopkins University, RCEP will add US\$186 billion to the size of the global economy and 0.2 percent to the gross domestic product of its members.





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The Association of Southeast Asian Nations (ASEAN) represents a highly integrated economic region when compared to other parts of the world. Yet, in terms of taxation, there is a wide variation among its 10 member states.

ASEAN tax coordination is limited to the elimination of certain withholding taxes and the completion of the network of double tax treaties among all ASEAN countries. Companies that are looking to enter emerging markets in ASEAN must take note of the various taxes they may be subject to, and their variation across the region.

## Country-wise tax structure



### Brunei

A company is considered a resident if it is managed and controlled in Brunei, whereas a person who is physically present in the Sultanate for 183 days or more during the year is also considered a resident.

## Tax structure

Businesses in Brunei will be impacted by the following taxes:

- Corporate income tax;
- Value-added tax;
- Withholding tax; and
- Petroleum tax.

### Corporate income tax

A company is subject to tax on income derived from Brunei.

The corporate income tax (CIT) rate is 18.5 percent and is charged on the following threshold:

- 25 percent of the first BND 100,000 (US\$72,939) is charged at the 18.5 percent rate;
- 50 percent of the first BND 150,000 (US\$109,409) is charged at the 18.5 percent rate; and
- 100 percent for the amount above BND 250,000 (US\$182,349) is charged at the 18.5 percent rate.

### Value-added tax

There is no value-added tax (VAT) or sales tax in Brunei.

## Withholding tax

For resident companies in Brunei, there is no withholding tax on dividends, interest, royalties, and fees for technical services. Non-resident companies, however, will have to pay rates between 2.5 to 10 percent.

Rates for Resident and Non-Resident Companies in Brunei		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	0	0
Interest	0	2.5
Royalties	0	10
Fees for technical services	0	10

## Personal income tax

There is no personal income tax in Brunei, however, employers are required to contribute 5 percent of the wages of local employees to the Employees Trust Fund.

## Petroleum tax

Under the Income Tax (Petroleum) Act of 1963, oil and gas companies operating in the country are subject to a special 55 percent income tax rate.

## Brunei's DTA network

There is no withholding tax on dividends for resident and non-resident companies as well as no withholding tax on interest and royalties for resident companies. There is a withholding tax rate of 2.5 percent, 10 percent, and 10 percent for payment paid on interest, royalties, and fees for technical services for non-resident companies.

## Countries with Signed DTAs with Brunei

A-B	C-J	K-O	P-S	T-Z
Bahrain	Cambodia	Korea (South)	Pakistan	United Arab Emirates
	China	Kuwait	Singapore	United Kingdom
	Hong Kong	Laos		Vietnam
	Indonesia	Luxembourg		
	Japan	Malaysia		
		Oman		



## Cambodia

The Law of Taxation is the principle taxation law in Cambodia and taxpayers must submit and pay their taxes to the General Department of Taxation (GDT) on an annual and monthly basis.

### Tax structure

Most businesses will be affected by the following taxes:

- Corporate income tax;
- Minimum tax;
- Value-added tax;
- Withholding tax; and
- Personal income tax.

### Corporate income tax

The standard corporate income tax (CIT) rate in Cambodia is 20 percent, which is implemented through a self-assessment regime.

There are three classes of taxpayers:

- Small taxpayers;
- Medium taxpayers; and
- Large taxpayers.

On January 12, 2021, Cambodia's Ministry of Economy and Finance issued Prakas 009 on the new Reclassification of Taxpayers under the Self-Assessment Regime. Prakas 009 has been in effect since January 1, 2021. The main aim of Prakas 009 is to determine the criteria for small, medium, and large taxpayers.

Taxpayer Classification Based on Annual Turnover	
Taxpayer classification	Criteria
	Prakas 025
Small	<ul style="list-style-type: none"> <li>Annual turnover from 250 million riel (US\$61,500) to 700 million (US\$172,000);</li> <li>Turnover or expected turnover of more than 60 million riel (US\$14,700) for three consecutive months per calendar year; or</li> <li>Participates in the bidding, price consulting, or price surveying in supplying goods and services.</li> </ul>
Medium	<ul style="list-style-type: none"> <li>Annual turnover from 700 million riel (US\$172,000) to 4 billion riel (US\$983,000);</li> <li>Businesses incorporated as representative office or as a legal entity;</li> <li>Foreign diplomatic and consular mission, technical agencies of other countries, or international organizations; or</li> <li>Non-government associations, national and sub-national government institutions.</li> </ul>
Large	<ul style="list-style-type: none"> <li>Annual turnover of more than 4 billion riel (US\$983,000);</li> <li>The business is registered as a multinational company or foreign branch office; or</li> <li>The business is registered as a Qualified Investment Project (QIP).</li> </ul>

Under Prakas 009, the General Department of Taxation also has the authority to re-determine the classification of a taxpayer based on the value of their assets if the declared turnover does not reflect actual turnover.

Additional Criteria for Tech. Pass Renewal	
A	B
Founded a company in Singapore that sells tech-based product or service.	Serve in the Board of Directors of a Singapore-based company (does not need to be a tech company).
Serve a leading role in a tech company in Singapore.	Acted as a mentor to a Singapore-based start-up.
Serve a leading role in two or more Singapore-based companies.	Acted as a lecturer/adjunct professor in a Singapore institute of higher learning.
Employed in a technical role in a Singapore-based company (leading a team).	Provided training not covered under B2 or B3.
Employed in a leading technical role in two or more Singapore-based companies.	Invested in a Singapore-based tech company.

Business entities engaged in oil and natural gas production and the exploitation of natural resources will be subject to a 30 percent CIT rate. Entities engaging in Qualified Investment Projects (QIP) will generally pay a zero percent rate.

## Minimum tax

The minimum tax is imposed on taxpayers who maintain improper accounting records. The minimum tax due is equal to one percent of total turnover, except value-added tax (VAT), and is irrespective of whether the taxpayer is in a profit or loss situation.

## Value-added tax

VAT is levied on goods and services as well as the sales of fixed assets. The standard rate is 10 percent although some businesses are eligible for zero percent VAT if they engage in activities that support exporters. These include garment, textile, and footwear industries.

## Withholding tax

Withholding tax applies to both residents and non-resident companies in Cambodia. There is no withholding tax on dividends paid to resident companies, whereas non-residents will pay a 14 percent rate. The tax rate on interest, royalties, and fees for technical services is 15 percent for resident companies and 14 percent for non-resident companies.

Withholding Tax Rates for Resident and Non-Resident Companies in Cambodia		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	0	14 + Advance tax on dividend distributions (ATDD)
Interest	15	14
Royalties	15	14
Fees for technical services	15	14

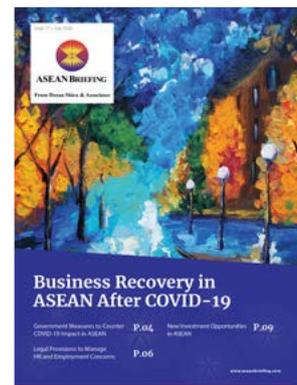
## Personal income tax

Cambodia does not impose personal income tax per se, instead, there is a tax on monthly salaries imposed on individuals who derive income from the country. The term salary also includes, in addition to wages, remunerations, bonuses, and other fringe benefits. A resident employee is taxed on their worldwide sources of income whereas non-residents are taxed on Cambodia-sourced income.

An individual is considered a resident in Cambodia if they domicile in the country or are in Cambodia for than 182 days in any 12-month period.



### RELATED READING



#### **Business Recovery in ASEAN After COVID-19** *ASEAN Briefing Magazine* July, 2020

In this issue of the ASEAN Briefing magazine, we begin by introducing the different incentives and measures issued by ASEAN's largest economies from March to June 2020 to mitigate the economic impact of the virus. We then analyze the HR and employment issues faced by businesses during the pandemic. Finally, we focus on the investment opportunities in ASEAN in the post COVID-19 era.

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## Personal Income Tax Rates in Cambodia

Income	Tax rate (%)
0-1,300,000 riel (US\$319)	0
1,300,001 riel (US\$319) – 2,000,000 riel (US\$490)	5
2,000,001 riel (US\$490) – 8,500,000 riel (US\$2,086)	10
8,500,001 riel (US\$2,086)- 12,500,000 riel (US\$3,068)	15
Above 12,500,000 riel (US\$3,68)	20

Non-residents are taxed at a flat rate of 20 percent.

## Cambodia's DTA network

There is no withholding tax on dividends for resident companies whereas there is a withholding tax rate of 15 percent on interest and royalties paid to resident companies.

## Countries with Signed DTAs with Cambodia

A-B	C-J	K-O	P-S	T-Z
Brunei	China	Kazakhstan	Singapore	Thailand
	Hong Kong	Malaysia	South Korea	Vietnam
	Indonesia			



# Indonesia

Taxation in Indonesia was based on Law No. 6, 2009, before reforms led to amendments under Law No. 6, 2009, as the government continues to reform the tax system to further ease doing business.

In an effort to boost compliance and tax revenues, the government introduced the electronic digital transaction tax as well as preparing the landmark omnibus bill on taxation to simplify tax regulations and improve compliance.

## Tax structure

There are a variety of taxes in the country which include corporate income tax (CIT), personal income tax, value-added tax, and digital tax.

### Corporate taxation

Corporate income tax is set at a basic rate of 20 percent for the 2022 fiscal year. There are several facilities given to businesses regarding the CIT if they fulfil the following conditions:

- Companies that are listed on the stock exchange that offer the minimum requirement of 40 percent of total share capital are subjected to a three percent tax cut from the standard rate, allowing them to pay a 20 percent CIT;
- Companies that have an annual turnover of 50 billion rupiah (US\$3.5 million) are eligible for a 50 percent tax cut from the standard rate, which is imposed proportionally on the part of the gross turnover of up to 4.8 billion rupiah (US\$336,000); and
- Companies with gross turnover of no more than 4.8 billion rupiah (US\$336,000) are subject to a 0.5 percent tax of total turnover.

### Value-added tax

Value-added tax (VAT) in Indonesia is imposed on the provision of services or the transfer of taxable goods. VAT rates are set out below:

- 11 percent imposed on most manufacturers, retailers, wholesalers, and importers from April 2022 and 12 percent by 2025;
- Export of tangible and intangible goods are subject to zero percent VAT; and
- Export of services is subject to zero percent VAT.

The government's negative list sets out all the goods and services that are non-taxable. These include among others – mining or drilling products, basic food commodities, medical health services, financial services, and educational services

## **VAT during pre-production period**

Before the Omnibus Law, if a VAT-able entity had not moved beyond the pre-production stage (not exported or delivered any VAT-able goods or services) during a certain period of time, then the entity is deemed to have failed to produce any 'input VAT' that has already been credited and thus can no longer be claimed.

Under regulation PMK-18/2021, the regulation emphasizes this point and that a VAT-able entity is considered to not have made a delivery if they have not exported or delivered any VAT-able services or goods. Any deliveries made for the entity's own use, or as gift for customers, or deliveries from a head office or branch office, are not considered as deliveries when assessing if an entity has moved beyond the pre-production stage.

The pre-production stage is generally three years, which is extended for manufacturing sectors and businesses sectors under the National Strategic Projects to five or six years, respectively.

## **VAT credit**

The Omnibus Law provides several provisions regarding VAT credit, namely for input VAT. The provisions set out that input VAT cannot be credited and must be paid back to the state treasury by the VAT-able entity, in the event that the entity has received a refund of the tax overpayment and/or has credited the input VAT as output VAT payable in a tax period.

Also, if the VAT-able entity is compensated for excess tax payments, the VAT-able entity cannot be compensated in the next tax period.

## **Crediting input VAT prior to becoming a VAT-able entity**

If the Directorate General of Tax deems an entity to be VAT-able, then the input VAT prior to this can now be creditable 80 percent of the output VAT.

## **Personal income tax**

Expatriate workers need to know that personal income tax (PIT) in Indonesia is determined through a self-assessment scheme.

The country has adopted a worldwide income taxation system, meaning that individuals considered as Indonesia tax residents pay tax to the government on the income they earned in Indonesia, and also on income they earned from abroad, unless there is an applicable double tax agreement.

Non-resident taxpayers will only be liable to pay PIT for income they earn in Indonesia, unless the country in which they are a tax resident has an applicable tax treaty with Indonesia. In these cases, the taxpayer might not pay any tax in Indonesia or pay a reduced amount.

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Given these tax treatments, it is important for expatriate workers to understand their tax liabilities in Indonesia. It is advisable to use the services of registered local tax advisors to help determine which tax law regime will be applicable along with any exemptions that may bring.

### **Eligibility to pay income tax**

Under Indonesia's previous income tax law, an individual is considered a domestic tax subject if they were present in the country for more than 183 days during a 12-month period, or they have an intention to stay in Indonesia.

Through PMK 18/2021, which was issued in February 2021, the government has provided further clarification on the definition of 'residing in Indonesia' and the 'intention to stay in Indonesia'.

'Residing in Indonesia' is defined as an individual who:

- Lives at a place of residence in Indonesia that is at their disposal and can be accessed at all times, which they own, rent, and is not a place of transit;
- Have their vital interests in Indonesia; and
- Have their habitual abode in Indonesia

An 'intention to stay in Indonesia' needs to be substantiated with the following documents:

- A permanent stay permit;
- A limited stay visa;
- A limited stay permit; or
- Other documents that support their stay of more than 183 days in Indonesia.

### **Territorial taxation for foreigners**

Foreigners who have become domestic tax subjects will only be taxed on Indonesian-sourced income. This is only applicable if they meet the expertise requirements from Appendix II of PMK-18.

Their expertise, however, must be supported by:

- A certificate issued by a government-authorized institution, or have a minimum of five years' work experience in the field of science, technology, and math; and
- An obligation for knowledge transfer to an Indonesian citizen.

The territorial tax treatment is available for four years of residency. If the foreign individual leaves Indonesia and re-enter Indonesia within the four-year period, the territorial taxation will begin from the time they first became a domestic tax subject.



Foreigners looking to apply for the territorial tax treatment must do so through the Directorate General of Taxes (DGS). Those who were already a domestic tax subject prior to the issuance of PMK-18/2021 can also apply to the DGS for this tax treatment. If approved, the territorial taxation will start from November 2, 2020.

Certain foreign expatriates, because of their special legal status, are not considered as Indonesian tax residents and are exempted from paying PIT, even if they stay for more than 183 days per year or reside and intend to stay in Indonesia.

These exemptions apply for:

- Foreign diplomatic and consular personnel;
- Military personnel and civilian employees of foreign armed services; and
- Representatives of international organizations specified by the Minister of Finance.

When it comes to tax rates, residents and non-residents are taxed differently:

- Residents are subject to a withholding progressive tax (their net taxable income is set at graduated rates, with current rates ranging from five percent up to a maximum of 30 percent, depending on an individual's income); and
- Non-residents are subject to a final withholding flat tax of 20 percent on gross income.

### **Scope of taxable income**

According to the Personal Income Tax Law, income must be defined as any increase in economic capacity. It can consist of, among others, employment income and personal investment income.

According to Article 4 of Chapter 3 of the Law, income includes:

- Employment income;
- Income from the exercise of an independent profession or business;
- Passive income (dividends, royalties, interest, insurance gains);
- Capital gains (from the sale or transfer of property); and
- Rents and other income from the use of property.

## Personal Income Tax Rates in Indonesia

Annual income	Rate (%)
Up to 60 million rupiah (US\$4,220)	5
Above 60 million rupiah (US\$4,220) to 250 million rupiah (US\$17,500)	15
Above 250 million (US\$17,500) to 500 million rupiah (US\$35,170)	25
Above 500 million rupiah (US\$35,170) to 5 billion rupiah (US\$351,000)	30
Above 5 billion rupiah (US\$351,000)	35

### Deductions and relief

There are several elements that can be deducted from the gross income when determining the annual taxable income of an individual.

It is worth noting that a family is regarded as a single tax reporting unit with a single tax identity number (NPWP) in the name of the head of the family. The head of the family needs to report the income of their dependent spouse and children their tax return.

The following personal deductions are available for resident taxpayers.

## Income Tax Deductions in Indonesia

Basic of deduction	Deductible amount per year
Individual taxpayer	54 million rupiah (US\$3,739)
Spouse	Additional 4.5 million rupiah (US\$311)
Each dependent (max 3)	Additional 4.5 million rupiah (US\$311)

### Employer compliance obligations

Income tax in Indonesia is mostly paid by withholding by the employer. The tax withheld by employers must be remitted to the government body on a monthly basis.

### Employee compliance obligations

Expatriate employees are required to complete an annual tax return and compute their tax liability by March 31 of the following tax year.



The majority of PIT is paid through statutory employer withholdings on earned income. However, for any other income that a taxpayer in Indonesia earns on a regular basis, they must make monthly provisional tax payments to the tax department based on the income earned in the previous year.

### **Filing a tax return**

In order to file a tax return, an individual must register as a taxpayer in order to obtain a tax identification number (NPWP). Expatriates must obtain a NPWP if they are a tax resident.

While employers are responsible for deducting tax from their employees' salaries, it is the individual employee's responsibility to register as a taxpayer and file their tax returns.

## **Tax deregistration when leaving Indonesia**

It is highly recommended that expatriates leaving Indonesia permanently cancel their tax registration to avoid any misunderstandings, and thus avoid being continuously considered a tax resident of Indonesia.

To do so, expatriates should submit an application to the local tax office, which will then perform a tax audit on the taxpayer's returns and supporting documents prior to granting approval to deregister.

The individual should ensure that all tax related documents are readily available in anticipation of a tax audit (including bank statements, salary slips, foreign tax documentation if applicable, work contracts, etc.).

## **Dividends and offshore income exempted from income tax**

To increase investments in Indonesia's financial markets and the real sector, the government has provided income tax exemptions for foreign dividends received by domestic taxpayers. The reinvestment requirements are not required for domestic dividends received by domestic corporate taxpayers.

Such concessions will require reinvestment for a certain period from when the dividend is received. PMK-18/2021 provides details on these reinvestment requirements:

Qualifying reinvestments are as follows:

- Investment in financial market instruments such as:
- Government bonds, including shariah instruments;
- Bonds or sukuk issued by a state-owned enterprise, private companies;
- Financial investments in perception banks including shariah banks; or
- Other legal forms of investments.

Investments in financial instruments outside the money market include:

- Investment in real sector;
- Investment in infrastructure through a private-public partnership;
- Equity cooperation in an already existing company domiciled in Indonesia;
- Cooperation with the Indonesian Sovereign Wealth Fund; or
- Lending to small and medium-sized businesses in Indonesia.

The investment must be held for a minimum of three years from when the dividend or offshore income is received. The taxpayer must also invest the dividend or offshore income in the qualifying investments by the end of the third or fourth month after the end of the fiscal year. Finally, the investment cannot be transferred except to another qualifying investment.

Type of income	Reinvestment required	Threshold (%)
Domestic dividends received by corporate taxpayers	No	N/A
Domestic dividends received by domestic individual taxpayers	Yes	No
Offshore dividends received by corporate taxpayers - from a listed company	Yes	No
Offshore dividends received by domestic taxpayers - from a listed company	Yes	30
Offshore income received from a permanent establishment (PE)	Yes	30
Offshore income received from an active business (not from a PE or subsidiary)	Yes	No

Note: 30 percent from profit after tax  
Source: PwC - Taxflash

If the reinvestment requirement provides a 30 percent threshold, the taxpayer can enjoy the full exemption if this threshold is fulfilled. However, if the reinvestment is less than the 30 percent threshold, the taxpayer must pay income tax on the spread between the investment amount and the 30 percent threshold to enjoy the exemption.

Investors should note that the exemption does not apply to foreign citizens who utilize the double tax avoidance agreement (DTA) between Indonesia and the partner country/ jurisdiction of the DTA.

## Digital tax

As of July 2020, non-resident suppliers of digital services within Indonesia can now be appointed as VAT collectors and as such, are now required to collect 10 percent VAT and pay to the Indonesian government.

The following digital intangible goods will now be subject to VAT:

- The use or the right to use copyrights material in the field of art, science, and literature, such as e-books, magazines, software;
- The right to use recorded images or sounds which are distributed via fiber optics, satellite, or cable, among others;
- Image recordings or sound recordings used in television broadcasts, radio broadcasts, which are distributed via fiber optics, satellite, or cable, among others; and
- Motion-picture films or videotapes used as television broadcasts.

The government recognizes the following e-commerce entities based on their activities:

- Merchants (sellers): Businesses or individuals that conduct electronic offerings through electronic systems either managed or owned by themselves or through an e-commerce organizer;
- E-commerce organizers (PPMSE): Businesses or individuals that provide electronic systems to facilitate e-commerce transactions. These include business models, such as online streaming platforms, online marketplaces, online classified advertisements, and price comparison platforms, among others; and
- Intermediary Service Organizers (PSP): These are businesses or individuals that provide search system facilities (for example, Google, Bing) or those that provide information storage services (hosting and caching).

The aforementioned entities can be either domestic or foreign businesses and the legal requirements for each type will also differ.



### RELATED READING



#### **Opportunities for Foreign Investors in Indonesia's Digital Economy**

*ASEAN Briefing Magazine*  
March, 2021

In this issue of the ASEAN Briefing magazine, we provide an overview of Indonesia's digital economy, its vibrant startup scene, and how investors can utilize Singapore as a base for expansion into the country. We then analyze Indonesia's new laws for digital tax and the process for foreign companies to stay compliant. Finally, we focus on the investment opportunities in Indonesia's digital economy in areas, such as e-commerce, fintech, and the Internet of Things. digital expansion in Asia.

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## **Domestic merchants**

Domestic merchants must obtain a business license from the government's Online Single Submission (OSS) Agency. Under the country's Standard Classification of Business Fields, businesses carrying out trading via the internet need to comply with KBLI classification 4791.

## **Domestic e-commerce organizers**

Businesses who operate their own e-commerce facilities are classified as PPMSEs and must obtain a special license named, Surat Izin Usaha Perdagangan melalui Sistem Elektronik (business license for trading through an electronic system (SIUPMSE).

The SIUPMSE can be applied through the OSS system and businesses will need to adhere to certain criteria to be eligible. These are:

- Obtaining an Electronic System Provider certificate within 14 days after the SIUPMSE is issued;
- Must provide a website and/or application name to the government;
- Must establish a consumer complaints section on their website/application, which includes e-mail address and contact number in addition to the details of the Directorate-General of Consumer Protection and Trade Compliance;
- The PPMSE must provide facilities that inform or link customers to the OSS Agency's website; and
- The business must submit its transaction data (subscribers, payments, complaints, contracts, shipments etc.) to Statistics Indonesia (BPS), the government agency responsible for conducting statistical surveys

## **Foreign merchants**

Foreign merchants must provide a valid business license issued in the country where they are established to the domestic PPSME company which provides their electronic communication facilities. The domestic PPSME will then need to report all the transactional activities (subscribers, payments, complaints, contracts, shipments etc.) of the foreign merchant to the BPS.

## **Foreign e-commerce organizers**

Foreign PPSMEs that have been appointed as a 'VAT collector' by the Ministry of Finance are obligated to charge the 10 percent VAT rate on the sales of digital products to Indonesian consumers.

They must first have local transaction values of the following:

- The PPSME has completed transactions with Indonesian consumers that exceeds 600 million rupiah in a year or 50 million rupiah (US\$3,500) per month; or
- Traffic or visitors to the e-commerce site exceeds 12,000 users per year or 1,000 users per month.

## Withholding tax

Withholding tax applies to both residents and non-resident companies in Indonesia. The tax rate on dividends is 15 percent for residents and 20 percent for non-residents (unless they have an applicable tax treaty). The withholding tax rate on interest and royalties are also set at 15 percent for residents and 20 percent for non-residents. Withholding tax

<b>Withholding Tax Rates for Resident and Non-Resident Companies in Indonesia</b>		
<b>Nature of income</b>	<b>Tax rate (%)</b>	
	<b>Residents</b>	<b>Non-residents</b>
Dividends	15	20
Interest	15	20
Royalties	15	20

## Luxury-goods sales tax

The import of certain manufactured taxable goods may be liable to luxury-goods sales tax (LST). LST must be accounted every month together with VAT.

A summary of the LST rates is set out below.

Luxury-Goods Sales Tax in Indonesia								
Group	LST rates (%)							
	10	20	30	40	50	60	75	125
Luxury residences such as luxury homes, town houses, condominiums, apartments, etc		X						
Dirigibles, balloons, and other non-powered aircraft				X				
Firearms and other arms, except for state purposes				X	X			
Aircraft other than those for the state or commercial air-transport purposes					X			
Luxury cruisers, except for the need of the state and public transport as well as yacht for tourism							X	
Motor vehicles	X	X	X	X	X	X		X

## Stamp duty

Individuals, companies, and other organizations in Indonesia must pay stamp duties on certain legal documents. As of January 2021, the standard stamp duty tax rate is 10,000 rupiah (US\$0.70).

Previously, stamp duty was either 3,000 rupiah (US\$0.20), 6,000 rupiah (US\$0.40), or a combination of these rates.

Indonesia requires stamp duties on two main types of documents: documents created to explain events of a civil nature and documents to be used as evidence in a court of law.

Documents of a civil nature include the following:

- Agreements, certificates, statement letters, and similar documents and their copies;
- Notarial deeds and executorial deeds (*grosse*) and their copies;
- Deeds made before a land deed officer (also known as a land conveyance officer) and their copies;
- Securities in any form and name; and
- Documents stating a sum of money above 5,000,000 rupiah (US\$350), which describe the receipt of money or contain an acknowledgment of debt payment or settlement, either entirely or partially

In addition to these documents, the Law also applies to the following civil documents:

- Securities transaction documents, including futures contract transactions in any name or form;
- Auction documents in the form of excerpts, minutes, copies, and minutes of auction executorial deeds (*grosse*); and
- Other documents stipulated by Government Regulation.

The Law exempts the following documents from stamp duty:

- Land transfer and building rights documents used for handling and restoring social conditions following natural disasters;
- Land transfer and building rights documents used solely for religious or non-commercial activities;
- Documents relating to the implementation of government programs and monetary or financial policies; and
- Documents relating to the implementation of international agreements under binding international treaties or reciprocal laws.

## Electronic stamp duty

Electronic stamps, which carry a unique code and description, will apply to electronic transaction documents with a value above 5,000,000 rupiah (US\$350).

The Indonesian government, however, is still building the infrastructure to manage electronic stamp duties.

## Indonesia's DTA network

Indonesia has signed over 60 double tax avoidance (DTA) agreements with various countries, which eliminate instances of double taxation from cross-border activities. The withholding tax rate on dividends are set between seven to 15 percent whereas interest rates are set between five to 15 percent unless an applicable tax treaty is in place wherein there will be no tax.

The tax rate for royalties is between 10 to 15 percent.

### Countries with Signed DTAs with Indonesia

A-B	C-J	K-O	P-S	T-Z
Algeria	Canada	Korea (North)	Pakistan	Taiwan
Armenia	China	Korea (South)	Papua New Guinea	Tajikistan
Australia	Croatia	Kuwait	Philippines	Thailand
Austria	Czech Republic	Laos	Poland	Tunisia
Bangladesh	Denmark	Luxembourg	Portugal	Turkey
Belarus	Egypt	Malaysia	Qatar	Ukraine
Belgium	Finland	Mexico	Romania	United Arab Emirates
Brunei	France	Mongolia	Russia	United Kingdom
Bulgaria	Germany	Morocco	Serbia	United States of America
	Hong Kong	Netherlands	Seychelles	Uzbekistan
	Hungary	New Zealand	Singapore	Venezuela
	India	Norway	Slovakia	Vietnam
	Iran		South Africa	Zimbabwe
	Italy		Spain	
	Japan		Sri Lanka	
	Jordan		Sudan	
			Suriname	
			Sweden	
			Switzerland	
			Syria	



# Laos

In February 2020, Laos' new Income Tax Law (Tax Law No. 67/NA) came into effect. The law replaces Tax Law No. 70/NA, which was issued in 2015 and sets out the latest tax rates for businesses and employees.

## Tax structure

All companies that are incorporated under Lao Law will be subject to Lao taxes, such as corporate income tax, value-added tax, withholding tax, and personal income tax.

### Corporate income tax

Corporate income tax, also known as profit tax, is collected from all domestic and foreign businesses, and is imposed on profits. The progressive rates range from 0 to 20 percent, as illustrated in the following table.

Profit Tax Rates		
Description	2020 tax rates	2015 tax rates
General activities (eg freelancers, sole trader enterprises)	Progressive rate of 0-20%	Progressive rate of 0-24%
Tobacco companies	22%	26%
Mining activities	35%	35%
Lao stock exchange	13% for first four years, then 20% after	5% for first four years, then 24% after
Activities utilizing innovative technologies or renewable energy	7%	
Human resource development	5%	

### Value-added tax

The standard rate for value-added tax is 10 percent and applies to:

- Import of goods and services;
- Supply of goods and services in Lao DPR; and
- Export of services.

The export of goods is taxed at zero percent except for the export of natural resources that are not finished goods which is taxed at 10 percent.

## Withholding tax

The withholding tax rates have also been amended under the new tax law. The withholding tax rate on dividends is at 10 percent as well as interest paid to resident companies. The withholding tax rate for payment on royalties to resident companies is set at five percent.

Income Tax from Certain Business Activities		
Activities	2020 tax rates	2015 tax rates
Share transfer		2-10%
Building/land/house transfer	2%	2-5%
Online trading		
Commissions		10%
Intellectual property	5%	5%
Consultancy services		
Dividends		10%
Guarantee fees		
Rentals	10%	
Non-banking loan interest		
Transfer of agricultural land	1%	

## Personal income tax

Personal income tax is collected on a monthly basis through progressive rates. Individuals who reside in Laos for at least 183 days are subject to tax on all income earned in Laos.

## Income Tax Rates

Monthly income	2020 tax rates	Monthly income	2015 tax rates
LAK 1.3 million or below (US\$119)	0%	LAK 1 million or below (US\$91)	0%
LAK 1.3 - 5 million (US\$119 - US\$459)	5%	LAK 1 - 3 million (US\$91 - US\$275)	5%
LAK 5 - 15 million (US\$459 - US\$1,377)	10%	LAK 3 - 6 million (US\$275 - US\$551)	10%
LAK 15 - 25 million (US\$1,377 - US\$2,295)	15%	LAK 6 - 12 million (US\$551 - US\$1,102)	12%
LAK 25 - 65 million (US\$2,295 - US\$5,968)	20%	LAK 12 - 24 million (US\$1,102 - US\$2,204)	15%
Over LAK 65 million (US\$5,968)	25%	LAK 24 - 40 million (US\$2,204 - US\$3,673)	20%
		Over LAK 40 million (US\$3,673)	24%

## Laos DTA network

There is withholding tax on dividends for resident and non-resident companies set at 10 percent.

The withholding tax rate on royalties paid to resident and non-resident companies is five percent.

## Countries with Signed DTAs with Laos

A-B	C-J	K-O	P-S	T-Z
Belarus	China	Korea (North)	Singapore	Thailand
Brunei		Korea (South)		Vietnam
		Luxembourg		
		Malaysia		
		Myanmar		



# Malaysia

Malaysia implements a territorial tax system with residents and non-residents are taxed on their Malaysian source income.

## Tax structure

Foreign investors in Malaysia are subject to the following major taxes:

- Corporate income tax;
- Value-added tax;
- Income tax; and
- Digital service tax.

## Corporate tax

For resident and non-resident companies, corporate income tax (CIT) is imposed on income incurred in Malaysia.

The tax rates are of the following:

Corporate Income Tax Rates in Malaysia		
Company type	Chargeable income	Tax rate (%)
Resident company		24
Resident company with paid up capital of 2.5 million ringgit (US\$599,000) and gross income of less than 50 million ringgit (US\$11.9 million)	For the first 600,000 ringgit (US\$143,800)	17
Non-resident company		24

## Value-added tax

Malaysia replaced its Goods and Services Tax (GST) with the Sales and Services Tax (SST) regime in 2018. The sales tax rates are 10 percent, and the service tax rate is six percent. Some goods are taxed at a reduced rate of five percent.

The sales tax rate is levied on companies with sales value of taxable goods that exceed 500,000 ringgit (US\$120,000) in a 12-month period. The threshold for restaurants is 1.5 million ringgit (US\$361,000).

Businesses that are subject to the service tax rate include hotels, advertising, electricity, accounting services, and employment agencies.

## Withholding tax

The withholding tax only applies to non-resident companies or individuals who have sourced an income from Malaysia.

Withholding Tax Rates for Non-Resident Companies	
Nature of income	Tax rate (%)
Dividends	0
Interest	15 (unless the rate is reduced under a tax treaty)
Royalties	10
Fees for onshore services/ use of movable property	10

## Individual income tax

Malaysia uses both progressive and flat rates for personal income tax (PIT), depending on an individual's duration and type of work in the country. As expatriates may fall into either tax category, it is important to understand Malaysia's basic tax structure.

The Income Tax Act of 1967 structures personal income taxation in Malaysia, while the government's annual budget can change the rates and variables for an individual's taxation.

### *Income tax rate amendments*

Under Budget 2021, the government has reduced the income tax rate by one percentage point for resident taxpayers in the 50,000 ringgit (US\$12,375) to 70,000 ringgit band (US\$17,325) from 14 percent to 13 percent

## Malaysia Income Tax Rates for Residents 2021

Chargeable income	Existing tax rate (%)	New tax rate
0-5,000 ringgit (US\$1,237)	0	0
5,001 ringgit (US\$1,238)-20,000 ringgit (US\$4,949)	1	1
20,001 ringgit (US\$4,950)-35,000 ringgit (US\$8,662)	3	3
35,001 ringgit (US\$8,663)-50,000 ringgit (US\$12,374)	8	8
50,001 ringgit (US\$12,375)-70,000 ringgit (US\$17,324)	14	13
70,001 ringgit (US\$17,325)-100,000 ringgit (US\$24,749)	21	21
100,001 ringgit (US\$24,750)-250,000 ringgit (US\$61,874)	24	24
250,001 ringgit (US\$61,875)-400,000 ringgit (US\$98,999)	24.5	24.5
400,001 ringgit (US\$99,000)-600,000 ringgit (US\$148,499)	25	25
600,001 ringgit (US\$148,500)-1,000,000 ringgit (US\$247,498)	26	26
1,000,001 ringgit (US\$247,499)-2,000,000 ringgit (US\$494,996)	28	28
2,00,001 (US\$494,997) ringgit and above	30	30

## Special income tax rates for non-citizens holding key positions in companies

Non-citizen individuals who hold C-suite positions in companies looking to relocate to Malaysia can receive a flat income tax rate of 15 percent. To qualify, the individual must:

- Receive a monthly salary of not less than 25,000 ringgit (US\$6,187);
- Hold the C-suite position for a period of five consecutive years; and
- Be a Malaysian tax resident for each year of assessment throughout the flat tax rate treatment.

## Imposition of the prosperity tax

Also known as cukai makmur, companies with chargeable income of more than 100 million ringgit (US\$24 million) must pay an additional nine percent in corporate income tax (CIT) in 2022. This means businesses will pay a total of 33 percent in CIT.

The government has stated that this 'windfall tax' would be a one-off initiative given the high-expenditure requirements of the government to tackle the pandemic.

## Tax on income from outside of Malaysia

Effective from January 1, 2022, Malaysian residents will be taxed on their foreign-sourced income that is received in Malaysia. Through this measure, the government hopes to comply with the scope of the OECD Forum on Harmful Tax Practices and could help remove Malaysia from the European Union's 'grey list' of tax havens.

For countries that have a double taxation avoidance agreement with Malaysia, the taxpayer can claim tax relief for interest, royalty, and technical fees.

## Deferment of income tax installment

Micro, small, and medium-sized enterprises (MSMEs) can defer the monthly installments of income tax for six months until June 30, 2022.

## Tax identification number

To broaden the tax base, the government will introduce a tax identification number (TIN) for taxpayers in 2022. The TIN will be automatically issued to every person and will become a requirement to be disclosed in all types of transaction documents.

## Digital service tax

From January 1, 2020, the Malaysian government will impose a digital services tax (DST) of six percent on foreign digital service providers (FSPs) in Malaysia.

### *Defining digital services*

The Royal Malaysian Customs Department (RMCD) guide defines digital services as any service that is subscribed or delivered over the internet or other electronic networks with minimal human intervention from the service provider.

The guide provides a few examples of digital services which include:

- Online licensing of software;
- Firewalls;
- Mobile applications and video games;
- Provision of e-books, films, music, streaming services, subscription-based media;
- Search engines and social networks;
- Website hosting services, cloud storage services;
- Online advertising platforms;
- Internet-based communications; and
- Online learning services.



The guide also defines FSPs as:

- A person who sells digital products to consumers in Malaysia;
- A person who sells digital products through intermediaries; or
- An online platform that sells digital products on behalf of an overseas provider.

#### ***Revenue threshold***

Foreign digital service providers who have reached 500,000 ringgit (US\$120,000) in annual turnover must register to collect and remit the six percent service tax. Applications for submission began October 1, 2019.

Registered FSPs must issue invoices and file tax returns on a quarterly basis, ending on the last day of any month of any calendar year.

#### ***Defining consumers***

The RMCD guide defines a consumer as any business or individual that fulfils any two of the following criteria:

- Makes payment an FSP through a credit card or debit facility provided by a financial institution under the country's Ministry of Finance;
- Resides in Malaysia; or
- Acquires the digital service through an internet protocol (IP) address registered in Malaysia.

To determine whether the consumer resides in Malaysia, the guide advises FRPs to consider:

- The consumer's billing address in Malaysia; and
- The consumer's home address in Malaysia.

## Malaysia's DTA network

The withholding tax rate is only subject to non-residents in Malaysia. Dividends are subject to a zero percent withholding tax and interest paid to non-resident companies are subject to a 15 percent tax rate. Royalties are subject to a 10 percent withholding tax.

Countries with Signed DTAs with Malaysia				
A-B	C-J	K-O	P-S	T-Z
Albania	Canada	Kazakhstan	Pakistan	Thailand
Australia	China	Korea (South)	Papua New Guinea	Turkey
Austria	Chile	Kyrgyz Republic	Philippines	Turkmenistan
Bahrain	Croatia	Kuwait	Poland	United Arab Emirates
Bangladesh	Czech Republic	Laos	Qatar	United Kingdom
Belgium	Denmark	Lebanon	Romania	Uzbekistan
Bosnia & Herzegovina	Egypt	Luxembourg	Russia	Venezuela
Brunei	Fiji	Malta	San Marino	Vietnam
	Finland	Mauritius	Saudi Arabia	Zimbabwe
	France	Morocco	Senegal	
	Germany	Myanmar	Seychelles Republic	
	Hong Kong	Namibia	Singapore	
	Hungary	Netherlands	Slovak Republic	
	India	New Zealand	Sri Lanka	
	Indonesia	Norway	South Africa	
	Iran		Spain	
	Ireland		Sudan	
	Italy		Sweden	
	Japan		Switzerland	
	Jordan		Syria	



# Myanmar

The Internal Revenue Department under the Ministry of Planning, Finance, and Industry regulates the administration of tax in Myanmar.

## Tax structure

There are several tax laws in Myanmar that foreign investors should be aware of. These are:

- Union Tax Law;
- Tax Administration Law of 2019;
- Specific Goods Tax Law of 2016;
- Commercial Tax Law of 1990; and
- Income Tax Law of 1974.

### Corporate income tax

The Union Tax Law 2021, which came into effect on October 1, 2021, lowered the corporate income tax (CIT) rate from 25 percent to 22 percent. Companies listed on the Yangon Stock Exchange are taxed at a reduced rate of 20 percent.

### Value-added tax

There is no value-added tax in Myanmar

### Withholding tax

There is no withholding tax on resident companies apart from royalties (10 percent) and fees for technical services (two percent) but applies only to payments made by government entities to residents. There is withholding tax on non-resident companies, ranging from 2.5 to 15 percent.

Withholding Tax Rates for Companies in Myanmar		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	0	0
Interest	0	15
Royalties	10	15
Fees for technical services	0 (two percent for payments made by government entities to residents)	2.5

## Personal income tax

Under the Myanmar Income Tax Act, resident foreigners are taxed on their worldwide income whereas non-residents are taxed only on income derived from Myanmar. Foreigners who reside in Myanmar for at least 183 days are considered resident foreigners.

Personal Income Tax Rates in Myanmar	
Income	Tax rate (%)
2 million kyat (US\$1,116) and below	0
2 - 10 million kyat (US\$1,116 - 5,582)	5
10 - 30 million kyat (US\$5,582 - 16,745)	10
30 - 50 million kyat (US\$16,745 - US\$27,909)	15
50 - 70 million kyat (US\$27,909 - US\$39,072)	20
Above 70 million kyat (US\$39,072)	25

## Myanmar DTA network

There is no withholding tax levied on dividends and interest paid to resident companies but there is a 15 percent withholding tax levied on interest paid to non-resident companies. The withholding tax rate on royalties paid to resident and non-resident companies is 10 and 15 percent, respectively.

Countries with Signed DTAs with Myanmar				
A-B	C-J	K-O	P-S	T-Z
	India	Korea (South)	Singapore	Thailand
		Laos		United Kingdom
		Malaysia		Vietnam



## Philippines

The taxation policy in the Philippines is chiefly governed by the following Republic Acts:

- The Corporate Recovery and Tax Incentives for Enterprises Act (CREATE Act)
- Tax Reform for Acceleration and Inclusion (TRAIN) Law
- Article VI, Section 28 of the Constitution;
- The National Internal Revenue Code; and
- Local Government Code of 1991.

### Tax structure

The country imposes a territorial tax system, meaning only Philippine-sourced income is subject to Philippine taxes.

### Corporate income tax

From July 2020 to 2022, foreign companies will be eligible for a reduced corporate income tax (CIT) rate of 25 percent, down from the regular rate of 30 percent. The reduction in the headline CIT rate was passed by the CREATE Act, which also stipulates the further reduction of the CIT rate by one percent per year to finally reach 20 percent in 2027 for foreign companies.

Domestic micro, small, and medium-sized companies will directly benefit from a preferential rate of 20 percent (businesses with taxable income of up to PHP 5 million (US\$99,069) and not exceeding PHP 100 million (US\$2 million).



The CIT of 25 percent is levied on net income on all sources. Non-resident companies are taxed only on their Philippine-sourced income. Domestic companies are taxed on their worldwide income.

## Minimum corporate income tax

A minimum corporate income tax (MCIT) of two percent is imposed on the gross income of both domestic and resident foreign corporations, on an annual basis. It is imposed from the beginning of the fourth taxable year immediately following the commencement of the business operations of the corporation.

The MCIT is imposed when the standard 20 percent CIT is lower than the two percent MCIT on the company's gross income. Any excess of the MCIT over the normal tax may be carried forward and credited against the normal tax for the three immediately succeeding taxable years.

## Withholding tax

### Dividends

Dividends distributed by a resident company are subject to withholding tax at 25 percent; those distributed to non-residents are taxed at 15 percent, provided the country of the non-resident recipient allows a tax credit of 15 percent. The withholding tax may be reduced under an applicable tax treaty.

### Interest

Interest paid to a non-resident is subject to a 20 percent withholding tax unless otherwise stipulated under a tax treaty.

### Royalty

Royalty payments made to a domestic or resident company are subject to a final withholding tax of 20 percent. A 25 percent withholding tax is levied on royalty payments to non-residents.

## Fringe benefits tax

Fringe benefits granted to supervisory and managerial employees are subject to 35 percent tax on the grossed-up monetary value of the fringe benefit. Under new income tax regulations, fringe benefits mean any good, service, or other benefit granted in cash or in kind, other than the basic compensation, by an employer to an individual employee.

The benefits include, but are not limited to: housing, expense accounts, vehicles, household personnel, interest on loans at below market rate, club membership fees, expenses for foreign



travel, holiday and vacation expenses, education assistance, and life or health insurance and other non-life insurance premiums.

Fringe benefits tax, however, is not imposed when the fringe benefits are deemed necessary to the nature of your business.

## Branch profit remittance tax

Branches of foreign companies in the Philippines, except those registered with the Philippine Economic Zone Authority, are subject to income tax at the rate of 30 percent on their income derived within the Philippines. A 15 percent branch profit remittance tax (BPRT) is levied on the after-tax profits remitted by a branch to its head office. After-tax profits remitted by a branch do not include income items which are not effectively connected with the conduct of its trade or business in the Philippines. Such income items include interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic, or casual gains, profits, income, and capital gains received during each taxable year from all sources within the Philippines.

## Improperly accumulated earnings tax

Income accumulated by closely held corporations with a purpose of avoiding tax attracts an improperly accumulated earnings tax (IAET) of 10 percent. The closely held corporation may refer to companies wherein at least 50 percent of the capital stock or voting power is owned directly or indirectly by not more than 20 individuals.

The tax base of the 10 percent IAET is the taxable income of the current year plus income exempt from tax, income excluded from gross income, income subject to final tax, and the amount of net operating loss carry-over deducted. Corporations excluded from the ambit of the IAET include banks and other nonbank financial intermediaries; insurance companies; publicly held corporations; taxable partnerships; general professional partnerships; non-taxable joint ventures; and duly registered enterprises located within the special economic zones declared by law, which enjoy payment of special tax rate on their registered operations or activities in lieu of other taxes, national or local.

The criteria to determine the liability for the IAET is the purpose of the accumulation of the income and not the consequences of the accumulation. That is, if a company allows its earnings or profits to accumulate within its reasonable needs, then it would not be subject to the tax unless proven to the contrary.

## Personal income tax

The Philippines implements a progressive personal income tax rate of up to 35 percent. The TRAIN Act, which was passed at the end of 2017, stipulated provisions to reduce personal income tax on all taxpayers except those in the highest income bracket. Taxpayers in all income brackets below PHP 8 million will therefore see between two and five percent reduction in personal income tax rate from January 1, 2023, onwards.

The tax rate on employment income is as follows.

Personal Income Tax Rates in the Philippines		
Income	2021 - 2022 tax rate (%)	2023 tax rate (%)
0 - PHP 250,000 (US\$4,965)	0	0
PHP 250,001 (US\$4,965) - PHP 400,000 (US\$7,944)	20	15
PHP 400,001 (US\$7,944) - PHP 800,000 (US\$15,888)	25	20
PHP 800,001 (US\$15,888) - PHP 2,000,000 (US\$39,720)	30	25
PHP 2,000,001 (US\$39,720) - PHP 8,000,000 (US\$158,883)	32	30
Above 8,000,000 (US\$158,883)	35	35

## Value-added tax

The 12 percent value-added tax (VAT) rate is imposed on most goods and services that have achieved actual gross sales of over PHP 3 million (US\$59,581).

Under the VAT framework set in the Philippines, there are certain business activities that are classified as zero percent VAT. These include:

- Manufacturing or repackaging goods;
- Sales of goods or services exported outside of the country; or
- Services that are under specific laws or agreements that render zero percent VAT.

## CREATE Act

In April 2021, the Philippines government launched the largest stimulus program in the country's history – the CREATE Act.

The CREATE Act is a recalibration of the Corporate Income Tax and Incentives Rationalization Act (CITIRA), which was issued in September 2019, aimed at reducing the corporate income tax (CIT) rate and rationalizing specific tax incentives.



Through CREATE, the government immediately reduced the CIT rate from the previous 30 percent to 25 percent. The Act also stipulated that any losses incurred by non-large taxpayers in 2020 can be carried over for the next five years, and the government will be more flexible in granting fiscal and non-fiscal incentives to attract high-value foreign investments.

In reducing the CIT rate, the government hopes this will benefit more than 90,000 micro, small, and medium-sized (MSMEs) who make up the backbone of the Philippines' economy. Its previous CIT rate was the highest in ASEAN, a factor that has hindered local businesses from expanding and hampered the country's ability to compete with its regional neighbors.

The government says businesses in the country can save an estimated PHP 42 billion (US\$834 million) in tax savings and over PHP 625 billion (US\$124 billion) over the next five years. These savings can be reinvested by firms to revitalize their business and boost cost competitiveness.

#### **Carryover of net operating loss**

The Act recognizes the unique circumstances businesses are going through in 2020 and 2021, and thus provided an extended net operating loss carryover (NOLCO) for registered projects or activities during their first three years from the start of business activities, making it a total of five years.

This enhanced NOLCO amendment will allow companies to deduct incurred losses from tax payments for a much longer period and provide them time to re-organize their financial standing.

#### **Greater flexibility in granting incentives**

Under the CREATE Act, the Fiscal Incentives Review Board (FIRB), the agency responsible for overseeing the country's investment promotion agencies (IPAs), has been given the authority to recommend to the President the appropriate fiscal and non-fiscal support initiatives. This includes tax incentives, logistics support, training, the facilitation of obtaining certification from government agencies, and customs facilitation for investors, among others. Under CITRA, the FIRB had no such power.

Upon the recommendation of the FIRB, the President can approve the said incentives along with longer periods of availments of up to 40 years. The President can also modify or mix the type of incentive to create high-value investments and job creation.

#### **Extension of the sunset period**

An additional two-year 'sunset' provision is granted to firms currently registered with the Philippine Investment Promotion Agencies and paying the five percent gross income earned (GIE) tax incentive. The sunset period has been extended by two years. While the CITIRA Act provided a status quo of two to seven years, the CREATE Act adds two years, maintaining the provision from four years up to nine years.



There are four levels to the sunset provision:

- Companies benefitting from the GIE tax incentive for 10 years can benefit from a sunset period of four years;
- Companies benefitting from the GIE tax incentive for five to 10 years can benefit from a sunset period of five years;
- For companies benefitting from the GIE tax incentive for less than five years, will be granted a sunset period of seven years; and
- A sunset period of nine years is guaranteed for industries or activities that export their products or services and employ at least 10,000 people.

Companies applying for CREATE will need to showcase to the government that they can make measurable economic contributions, such as through the creation of high-quality jobs, promoting quality exports, development of pioneer industries, and use of modern technology.

Companies will also be reviewed every two years and approved activities will be given incentives in set periods of five, seven, and 10 years. Furthermore, the names of the businesses receiving the incentives shall be made open to the public for transparency.

## The Philippines DTA network

The Philippines is a signatory to over 35 double tax avoidance treaties. Under these agreements, tax relief comes in the form of preferential tax rates or tax exemptions.

Dividends distributed to a resident company will not be subject to any withholding taxes whereas non-residents are subject to a withholding tax rate of between 15 and 25 percent. Interest received from a resident company is subject to a 20 percent withholding tax and royalties for resident companies are subject to the same tax rate.

Countries with Signed DTAs with the Philippines				
A-B	C-J	K-O	P-S	T-Z
Australia	Canada	Korea (South)	Pakistan	Thailand
Austria	China	Kuwait	Poland	Turkey
Bahrain	Czech Republic	Malaysia	Qatar	United Arab Emirates
Bangladesh	Denmark	Mexico	Romania	United Kingdom
Belgium	Finland	Netherlands	Russia	United States
Brazil	France	New Zealand	Singapore	Vietnam
	Germany	Nigeria	Spain	
	Hungary	Norway	Sweden	
	India		Switzerland	
	Indonesia			
	Israel			
	Italy			
	Japan			



# Singapore

## Tax structure

As Singapore adopts a territorial basis of taxation, companies are taxed only on Singapore-sourced income. Foreign-sourced income, such as branch profits, dividends, and service income, are taxed when remitted or deemed remitted into Singapore but will be exempted provided that the income has been taxed in the source country with a rate of at least 15 percent. There is also no capital gains tax in Singapore.

### Corporate income tax in Singapore

Singapore imposes corporate income tax (CIT) at a flat rate of 17 percent, which is the lowest among ASEAN member states. The country practices a single-tier corporate tax system, which means businesses pay CIT only on chargeable income (profits), and all dividends are exempt from further taxation.

The low CIT rate has attracted a dynamic investment community into Singapore, comprising of more than 7,000 multinational firms, with more than half operating their Asia-Pacific business from the country.

Foreign investors should seek the help of registered local tax advisors to better understand how they can stay compliant with the relevant regulations.

### Who is obligated to pay?

Businesses that have their income derived from Singapore or income remitted to the country are obligated to pay corporate taxes at a rate of 17% on its chargeable income regardless of whether it is a local or foreign company.

The place of incorporation tax residency of a company is determined by where the business is managed and controlled. The location of the company's Board of Directors meetings, where strategic decisions are made, is a key factor in determining where the control and management is exercised. If the company's board of directors or other key management personnel that control the business are based outside of Singapore, then the company will be considered a non-tax resident.

Additionally, this is also the case if the company holds its board meetings outside the country, despite having the day-to-day operations conducted in Singapore.



Taxable incomes include:

- Profits from trade or business (the single-tier system this means Singapore-based companies will only pay taxes on profits and not on revenue);
- Royalties and premiums;
- Rental property income; and
- Income from investments such as interests.

## Benefits of being a tax resident

Qualifying as a tax resident will mean the company is eligible for the multitude of tax incentives the country offers that can lower the total effective CIT tax rate.

These incentives include being eligible for new startups to receive a tax exemption of 75 percent on the first S\$100 thousand (US\$73 thousand) of chargeable income and a further 50 percent exemption on the next S\$100 thousand (US\$73 thousand) of chargeable income (available for the first three years of operations). All other companies will receive a tax exemption of 75 percent on the first S\$10 thousand and a further 50 percent on the next S\$190 thousand of chargeable income.

Tax residents can enjoy the benefits from the country's more than 90 double tax avoidance (DTA) agreements, enabling businesses to eliminate instances of double taxation between treaty signatories. Moreover, tax residents have the advantage of gaining access to the wider Asian markets through the country's comprehensive free trade agreements (FTA).

## Individual income tax

The tax liability of foreigners in Singapore is dependent on their tax residency status.

Foreigners are considered tax residences if they:

- Stay or work in Singapore for more than 183 days in a calendar year or;
- Work continuously for three years or more.

## Tax rates

The tax rates on chargeable income are shown in the table below.

Individual Income Tax Rates in Singapore		
Chargeable income	Income tax rate (%)	Gross tax payable
First S\$20,000 (US\$14,888)	0	S\$0
Next S\$10,000 (US\$7,444)	2	S\$200 (US\$148)
First S\$30,000 (US\$22,329)	-	S\$200 (US\$148)
Next S\$10,000 (US\$7,444)	3.5	S\$350 (US\$260)
First S\$40,000 (US\$29,772)	-	S\$550 (US\$409)
Next S\$40,000 (US\$29,772)	7	S\$2,800 (US\$2,083)
First S\$80,000 (US\$59,537)	-	S\$3,350 (US\$2,492)
Next S\$40,000 (US\$29,772)	11.5	S\$4,600 (US\$3,422)
First S\$120,000 (US\$89,306)	-	S\$7,950 (US\$5,915)
Next S\$40,000 (US\$29,772)	15	S\$6,000 (US\$4,464)
First S\$160,000 (US\$119,076)	-	S\$13,950 (US\$10,379)
Next S\$40,000 (US\$29,772)	18	S\$7,200 (US\$5,357)
First S\$200,000 (US\$148,845)	-	S\$21,150 (US\$15,737)
Next S\$40,000 (US\$29,772)	19	S\$7,600 (US\$5,654)
First S\$240,000 (US\$178,576)	-	S\$28,750 (US\$21,391)
Next S\$40,000 (US\$29,772)	19.5	S\$7,800 (US\$5,803)
First S\$280,000 (US\$208,338)	-	S\$36,550 (US\$27,194)
Next S\$40,000 (US\$29,772)	20	S\$8,000 (US\$5,952)
First S\$320,000 (US\$238,101)	-	S\$44,500 (US\$33,111)
Excess S\$320,000 (US\$238,101)	22.5	-

Source: iras.gov.sg

Non-tax residents are taxed at a flat rate of 15 percent.

## Goods and services tax

The goods and services tax (GST), also known as value-added tax (VAT), is a consumption tax imposed on goods and services in Singapore regardless of whether they are acquired from domestic or overseas suppliers.

As GST is a self-assessed tax, Singapore-based businesses are required to assess their need to register for GST. This is, however, only applicable to businesses that earn a taxable turnover of more than S\$1 million (US\$738,000) during a 12-month period. The current GST rate is seven percent.

The GST that is charged onto customers is known as 'output tax', and the GST that is incurred on business purchases and expenses, which includes the import of goods, is known as the 'input tax'. The difference between the output and input tax is the net GST payable to the government.

### **GST on overseas digital services**

Starting from January 1, 2020, foreign digital service providers will have to register and charge for GST under Singapore's Overseas Vendor Registration (OVR) regime. Currently, only services procured from local businesses were subject to GST. Digital services include:

- Downloading mobile applications, e-books, and movies;
- Subscriptions to TV shows, music, and online gaming; and
- Downloading drivers, software, and firewalls.

However, foreign digital service providers will need to have yearly global turnover of more than S\$1 million (US\$744,000) and sell more than S\$100,000 (US\$74,411) worth of digital services to customers in Singapore, to be obligated to register and charge GST.

## GST treatment of media sales

Currently, the supply of media space for online advertising by a taxable person is a zero-rated supply for GST if the advertisement is substantially circulated (at least 51 percent) overseas. Under the changes, if the contractual customer is located outside of Singapore or is a GST-registered person in Singapore, the media sales will be zero-rated.

Like most digital sectors, online advertising has seen immense growth during the pandemic, and coupled with new developments in technology, it has become increasingly challenging for taxpayers to determine whether such media supplies qualify for zero-rated GST.

According to the IRAS, media sales refer to:

- Currently, the supply of media space for online advertising by a taxable person is a zero-rated supply for GST if the advertisement is substantially circulated (at least 51 percent) overseas. Under the changes, if the contractual customer is located outside of Singapore or is a GST-registered person in Singapore, the media sales will be zero-rated.
- Like most digital sectors, online advertising has seen immense growth during the pandemic, and coupled with new developments in technology, it has become increasingly challenging for taxpayers to determine whether such media supplies qualify for zero-rated GST.
- According to the IRAS, media sales refer to:

### **The supply of media sales by local suppliers**

As stated earlier, with effect from January 1, 2022, the supply of media sales will be zero-rated if it directly benefits a person overseas or a GST-registered person in Singapore.

For the supply of media sales, the comptroller — the person responsible for the quality of financial reporting in an organization — will regard the contractual client as the sole beneficiary of the services if the following criteria are satisfied:

The service agreement between the media supplier and their contractual client does not require the services to be provided to another party; and

The supplier only takes instructions from the contractual client for the service

### **The supply of media sales by overseas suppliers to GST-registered businesses in Singapore**

From January 1, 2022, if an overseas supplier makes a supply of media sales to a GST-registered person/business in Singapore then the recipient, if they are a reverse charge (RC) business, must apply RC and account for GST on the value of their imported services as if they were the supplier; regardless of the place of circulation of the advertisements.

RC businesses refer to those who are subject to reverse charge when they are not entitled to a full input tax credit or belong to a GST group not entitled to the full input tax credit.

Previously, the supply of media sales from an overseas supplier to a GST-registered person fell outside the scope of RC if the advertisements were substantially circulated outside of Singapore.

## The supply of digital media sales by overseas suppliers to non-GST registered persons in Singapore

From January 1, 2022, the supply of digital media sales by an overseas supplier to a non-GST registered person in Singapore will be subject to GST, under the Overseas Vendor Registration (OVR) regime.

The OVR regime was issued in January 2020 and obligates foreign digital service providers to register and pay for GST. Businesses must have a yearly global turnover of more than S\$1 million (US\$731,000) and sell more than S\$100,000 (US\$73,000) worth of digital services to customers in Singapore, in 12-months.

Currently, the overseas supplier can only charge GST if the advertisements are substantially circulated in Singapore.

The OVR regime is aimed at creating a 'level playing field' by protecting local retailers especially since Singapore imports billions of dollars of digital imports yearly.

## GST changes

The Singapore government has delayed the increase of the GST rate to after 2021 and thus it will remain at the current seven percent rate. The rate hike to nine percent is expected to occur between 2022 and 2025.

In addition, from January 1, 2023, the government will extend GST to low-value goods imported via air or post, valued up to S\$400 (US\$298). The GST charge is extended to imported non-digital services and online sales of low-value goods by overseas suppliers, meaning an end to GST-free online shopping for consumers.

## Withholding tax

The withholding tax only applies to non-resident companies or individuals who have sourced an income from Singapore. The types of income subjected to withholding tax are:

Withholding Tax on Payments to Non-Resident Companies	
Nature of income	Tax rate (%)
Dividends	Exempt
Interest	15
Royalties	10
Technical assistance and services fees	17
Rent on moveable property	15
Charter fees for aircraft or ship	0-2

## Capital gains tax

There is no capital gains tax in Singapore. Generally, the gains derived from the sale of a property/ investment in Singapore are not subjected to tax as it is a capital gain. However, the gains may be taxable if one is the business of trading shares.

## Singapore's DTA network

Singapore has one of the world's most extensive double tax agreement (DTA) networks, attracting international businesses from a multitude of conventional and nuanced industries.

DTAs eliminate instances of double taxation from cross-border activities, such as trade, knowledge sharing, as well as investments between two countries.

Singapore has signed over 90 DTAs with various countries and the full list can be found on the website of the Inland Revenue Authority of Singapore or IRAS, the main tax authority in the country.

### **Income types covered under a DTA**

Currently, there are several types of DTAs signed by Singapore: comprehensive, limited, and exchange of information arrangements (EOIAs).

Comprehensive DTAs provides relief from double tax for all income types between the two signatories. Limited DTAs, however, only provides relief from income generated from air transport and shipping, and EOIAs are provisions for the exchange of tax information.

The tax reliefs under each DTA treaty differs for each country.

They normally cover several income types:

- Tax on royalties;
- Tax on dividends;
- Tax on capital gains;
- Tax on interests;
- Shipping and air transport;
- Directors' fees;
- Independent and dependent personal services;
- Researchers;
- Students; and
- Income from immovable property.

## Claiming relief under the DTA

To obtain the benefits of the DTA, the company must first submit its Certificate of Residence (COR) to IRAS as evidence it is a tax resident in Singapore. Only Singaporean tax residents and the tax residents of the treaty partner are recognized.

To qualify as a Singaporean tax resident, an individual must be employed in the country for 183 days or more during the year. For companies, they must be registered in Singapore.

Tax residents of the treaty partner must also submit a COR certified by the tax authority of the treaty partner to the IRAS to obtain relief under the DTA.

Singaporean tax residents can still avoid double taxation even if Singapore does not have a DTA with a particular country through the Universal Tax Credit (UTC) scheme. This applies to all foreign taxes paid by a Singaporean tax resident on the following income categories:

- Royalties derived from outside of Singapore;
- Foreign income from professional services or consultancy;
- Foreign-sourced dividends; and
- Foreign branch profits.

The IRAS will grant the tax exemption if the following conditions are met:

- At least 15 percent in corporate taxes (headline tax) are paid on the income sourced from the foreign jurisdiction;
- The company has been subjected to tax in the foreign jurisdiction, this can be different from the headline tax; and
- The IRAS is satisfied that granting the tax exemption will benefit the tax resident in Singapore.

## Determining the treatment of profits

Defining a permanent establishment (PE) is an important feature within all DTA treaties in order to determine the treatment of business profits. The PE refers to the fixed place of business through which the taxpayer carries out their business operations.

The taxation of profits falls under the country where the PE is set up unless the company opens a PE in another country. In the absence of a DTA treaty, any profits would mean the PE would bear a double tax burden for the business.

This means foreign investors who have a subsidiary company registered in Singapore can take advantage of the country's DTAs as well as free trade agreements (FTAs) through ASEAN and Asia.

A business is deemed to have a PE if they carry out business activities lasting over 183 days in the following places:

- Offices;
- Factories;
- Warehouses;
- Farm or plantation;
- Construction or installation site
- Mines, wells, or quarries; and
- Workshops.

Countries with Signed DTAs, Limited DTAs, and EOIs with Singapore				
A-B	C-J	K-O	P-S	T-Z
Albania	Cabo Verde	Kazakhstan	Panama	Taiwan
Armenia	Canada	Korea (South)	Pakistan	Thailand
Australia	China		Papua New Guinea	Turkey
	Cambodia		Philippines	Tunisia
Austria	Cyprus	Kyrgyz Republic	Poland	
Bahrain	Chile	Kuwait	Portugal	Turkmenistan
Bangladesh			Qatar	United Arab Emirates
Barbados		Laos	Romania	United States
Belarus	Czech Republic	Latvia	Russia	United Kingdom
	Denmark	Lebanon	Rwanda	Uzbekistan
Belgium	Ecuador	Luxembourg	San Marino	Ukraine
	Egypt	Libya	Saudi Arabia	Venezuela
	Estonia	Lichtenstein	Serbia	Vietnam
	Ethiopia	Lithuania	Seychelles	
Bermuda		Malta	Slovak Republic	
Brazil	Fiji	Mauritius	Slovenia	
	Finland	Morocco	South Africa	
	France	Mexico	Spain	
	Gabon	Mongolia	Sri Lanka	
Brunei	Georgia	Myanmar	Sweden	
	Germany	Nigeria	Switzerland	
	Ghana			
	Greece			

Bulgaria	Guernsey	Namibia
	Hong Kong	Netherlands
	Hungary	New Zealand
	India	Norway
	Indonesia	Oman
	Iran	
	Ireland	
	Isle of Man	
	Israel	
	Italy	
	Japan	
	Jersey	
	Jordan	



## Thailand

Taxes in Thailand are governed by the Revenue Code, which follows the concept of a self-assessment system. The Revenue Department of the Ministry of Finance is responsible for the administration of taxes, which is imposed on regional as well as national levels.

### Tax structure

Taxes are imposed on the national and local levels. The taxes are levied under the following:

#### Direct taxes

- Corporate income tax;
- Personal income tax; and
- Petroleum tax.

#### Indirect taxes

- Value-added tax;
- Specific business tax; and
- Land and building tax.

#### Corporate income tax

A company incorporated under Thai laws will be considered as a resident company and be subject to the 20 percent corporate income tax (CIT) rate.

For businesses that are classified as small or medium sized (SMEs), the CIT rates can be seen in the following table.

SMEs can get a reduced tax rate if they meet the following criteria:

Corporate Income Tax Rates for SMEs	
Net profit	Tax rates (%)
0-300,000 baht (US\$8,854)	Nil
300,001 baht (US\$8,854) - 3,000,000 baht (US\$88,555)	15
Over 3,000,000 baht (US\$88,555)	20

- Income from the sales of goods and services not exceeding 30 million baht (US\$885,000) in any accounting period; and
- Having a paid-up share capital of not more than 5 million baht (US\$147,000).

## Personal income tax

To be considered as a resident taxpayer, the individual must reside in Thailand for 180 days or more in any tax year.

Personal Income Tax Rates in Thailand	
Net income	Tax rates (%)
0-150,000 baht (US\$4,400)	None
150,001 baht (US\$4,400) – 300,000 baht (US\$8,858)	5
300,001 baht (US\$8,858) – 500,000 baht (US\$14,700)	10
500,001 baht (US\$14,700) – 750,000 baht (US\$22,145)	15
750,001 baht (US\$22,145) – 1,000,000 baht (US\$29,529)	20
1,000,001 baht (US\$29,529) – 2,000,000 (US\$59,000)	25
2,000,001 baht (US\$59,000) – 5,000,000 baht (US\$147,000)	30
Over 5,000,000 baht (US\$147,000)	35

## Value-added tax

The value-added tax (VAT) rate of 10 percent is liable for every person who conducts business in Thailand, which includes manufacturers, importers, and retailers. Businesses that have an annual turnover of over 1,800,000 baht (US\$57,000) must register as VAT operators.

Business activities are exempt from VAT, some of these are:

- Taxpayers with sales with less than 1,800,000 baht (US\$57,000) per year;
- Educational services;
- Research and technical services;
- Religious activities and public charities;
- Healthcare services;
- Imported goods brought into a duty-free zone;
- Sale of goods related to agriculture; and
- Rent of immovable properties.

## Withholding tax

The withholding tax imposed on dividends paid to another Thai company is subject to a 10 percent tax rate. This can be exempt if certain conditions are satisfied under the promotion law or Revenue Code.

Interest paid to non-resident companies are subject to 15 percent withholding tax whereas it is only one percent for residents. Royalties are subject to a three percent withholding tax for residents and a 15 percent tax on non-residents.

Withholding Tax Rates for Resident and Non-Resident Companies in Thailand		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	10/0	10
Interest	1	15
Royalties	3	15
Fees for technical services	3	15

## Specific business tax

The specific business tax (SBT), is an alternative tax levy on services. Businesses that are excluded from VAT will instead be subject to SBT.

Specific Business Tax Rates	
Business type	Applicable rate (%)
Commercial banking or credit financing businesses	3 (although for certain types of banking incomes the rate is 0.01 percent)
Life insurance	2.5
Pawn business	2.5
Businesses with transactions similar to commercial banking	3

## Land and building tax

In March 2019, the Thai government introduced the new Land and Building Tax Act B.E. 2562, which has been in effect since January 1, 2020.

The Act obligates individuals, corporate entities, or any beneficiaries of land or buildings, to pay land and building tax. The new law replaces several legislations which include – the Land Tax of 1932; the Land Development Tax of 1965; the Notification of the National Executive Council No. 156 of 1972; and the Royal Decree Designating the Medium Price of Land for Land Development Tax Assessment of 1986.

The tax rates on properties were previously assessed on an income-based method. The Act replaces this method with an assessment based on the property's appraised value, as determined under the current Land Code.

The tax will be applied to the following categories of property:

- Residential (including condominiums);
- Commercial;
- Agricultural; and
- Unused/vacant land.

Through these latest changes, the government hopes to introduce a progressive tax system, encourage landowners to utilize their land, and help reduce the overall tax burden on property owners. The tax payments will be due in April of every year.

## Maximum Tax Rates in Thailand for Properties

Property type	Tax rate
Commercial (land or property used solely for commercial use and not agricultural or residential purposes)	1.20%
Unused/vacant land (property that is either left vacant or is not reasonably used)	1.20%
Residential (places of dwelling)	0.3%
Agricultural (used for agricultural purposes such as farming, agriculture, animal domestication)	0.15%

## Tax exemptions

Property owners can be exempted from the land and building tax if they fall under the following categories:

- Agricultural land worth up to 50 million baht (US\$1.5 million);
- Land or building used for residential purposes and is worth up to 50 million baht (US\$1.5 million) (the owner's name should be on the deed of the property);
- The building is used for residential purposes and is worth up to 10 million baht (US\$318,000) (the owner's name should be on the deed of the property); and
- Individual owners of agricultural properties – they will be exempt from land and property tax for the tax period 2020-2023.

## Transition period

The Act provides a two-year transition period, starting January 1, 2020, to allow property owners to adjust to the new law. During this period there will be a reduced tax rate. This can be seen from the following tables.

## Residential Property

Appraised value	Tax rate
0-50 million baht (US\$0-1.5 million)	0.02%
50-75 million baht (US\$1.5-2.3 million)	0.03%
75-100 million baht (US\$2.3-3.1 million)	0.05%
Above 100 million baht (US\$3.1 million)	0.1%

Commercial Property	
Appraised value	Tax rate
0-50 million baht (US\$0-1.5 million)	0.3%
50-200 million baht (US\$1.5-6.3 million)	0.4%
200 million-1 billion baht (US\$6.3-31 million)	0.5%
1 billion-5 billion baht (US\$31-159 million)	0.6%
Above 5 billion baht (US\$159 million)	0.7%

Unused/Vacant Property	
Appraised value	Tax rate
0-50 million baht (US\$0-1.5 million)	0.3%
50-200 million baht (US\$1.5-6.3 million)	0.4%
200 million-1 billion baht (US\$6.3-31 million)	0.5%
1 billion-5 billion baht (US\$31-159 million)	0.6%
Above 5 billion baht (US\$159 million)	0.7%

## Tax reductions

There are further tax deductions in the broad tax deduction clause of the Act. To qualify, property owners should fulfil certain criteria:

For 50 percent tax reduction:

- An inherited property that is used for residential purposes. The owner's name must be on the deed; or
- Property used for energy infrastructure projects such as a power plant.

For 90 percent tax reduction:

- Land or buildings that are under development for an industrial estate for no longer than three years;
- Land or buildings that are awaiting sale for no longer than two years starting March 2019;

- Land or buildings awaiting sale and is owned by a financial institution. The financial institution must have held the property for no more than five years;
- Land or buildings under development for industrial or residential purposes; or
- Land or buildings under development for an educational institute.

The government is estimated to collect 394 billion baht (US\$1.2 billion) from land and property tax in 2020.

## Thailand's DTA network

Countries that have double tax treaties with Thailand are shown in the table below. Dividends are subject to a 10 percent withholding tax and interest paid to resident companies are subject to a one percent tax rate. Royalties are subject to a three percent withholding tax.

Countries with Signed DTAs with Thailand				
A-B	C-J	K-O	P-S	T-Z
Armenia	Cambodia	Korea (South)	Pakistan	Taiwan
Australia	Canada	Kuwait	Philippines	Tajikistan
Austria	Chile	Laos	Poland	Turkey
Bahrain	China	Luxembourg	Romania	Ukraine
Bangladesh	Cyprus	Malaysia	Russia	United Arab Emirates
Belarus	Czech Republic	Mauritius	Seychelles	United Kingdom
Belgium	Denmark	Myanmar	Singapore	United States
Bulgaria	Estonia	Nepal	Slovenia	Vietnam
	Finland	Netherlands	South Africa	
	France	New Zealand	Spain	
	Germany	Norway	Sri Lanka	
	Hong Kong	Oman	Sweden	
	Hungary		Switzerland	
	India			
	Indonesia			
	Ireland			
	Israel			
	Italy			
	Japan			


# Vietnam

All taxes in Vietnam are imposed at the national level; there are no local, city, or provincial taxes. Enterprises should pay tax in localities where they are headquartered or have duly registered branches.

## Tax structure

Most companies and foreign investors in Vietnam are subject to the following major taxes:

- Corporate income tax;
- Business license tax;
- Value-added tax;
- Special consumption tax; and
- Foreign contractor tax.

### Corporate income tax

All income arising inside Vietnam is subject to CIT, no matter whether a foreign enterprise has a Vietnam-based subsidiary, or whether that subsidiary is considered a permanent establishment (PE). The CIT rate of 20 percent is a direct tax levied on the profits (gross revenue minus expenses) earned by companies or organizations.

### Business license tax

The business license tax (BLT), is an indirect tax imposed on entities conducting business activities in Vietnam, paid by enterprises annually for each calendar year that they do business in the country. All companies, organizations, or individuals (including branches, shops, and factories) and foreign investors operating businesses in Vietnam are subject to BLT. The BLT ranges from ranging from VND 1 million (US\$43) to VND 3 million (US\$131) per year.

### Value-added tax

Value-added tax (VAT) is imposed on the supply of goods and services at three different rates: 0, 5, and 10 percent, with the latter being the standard rate. All organizations and individuals producing and trading goods and services in Vietnam are liable to pay VAT, regardless of whether the organization has a Vietnam-based establishment.

## Withholding tax

There is no withholding tax imposed on dividends for resident and non-resident companies in Vietnam. Interest rates for non-resident companies are set at five percent and can be further reduced under a tax treaty. Withholding tax on interest, royalties, and fees for technical services for resident companies are set at 20 percent.

<b>Withholding Tax Rates for Resident and Non-Resident Companies in Vietnam</b>		
<b>Nature of income</b>	<b>Tax rate (%)</b>	
	<b>Residents</b>	<b>Non-residents</b>
Dividends	0	0
Interest	20	5
Royalties	20	10

## Special consumption tax

The special consumption tax (SCT) is a form of excise tax that applies to the production or importation of 11 categories of products and six types of services, which are considered luxurious or non-essential, such as alcohol and tobacco products. Companies are liable for SCT both at the time of import and sale. However, to prevent an excessive tax burden, import SCT will be creditable against SCT incurred at the point of sale.

## Foreign contractor tax

Foreign businesses are considered foreign contractors if they conduct business or earn income in the country under contract with local organizations and individuals. Usually, foreign contracts are the winners of auctions or bid offerings organized by the Vietnamese government or organizations and may be principal contractors, general contractors, partnership contractors or subcontractors.

Foreign contractors in Vietnam are liable to pay the same tax rates applicable to local companies, including import-export duties, personal income tax and other taxes required by authorities.

## Vietnam's DTA network

The country has signed DTAs with over 70 countries. The tax rate on interest rates are set between 10 to 15 percent unless it is reduced under a tax treaty. Royalties paid to non-resident companies are subject to a 10 percent withholding tax whereas resident companies are subject to a 20 percent tax rate. There is no withholding tax on dividends.

Countries with Signed DTAs with Vietnam				
A-B	C-J	K-O	P-S	T-Z
Australia	Cambodia	Kazakhstan	Pakistan	Taiwan
Austriac	Canada	Korea (North)	Palestine	Turkey
Azerbaijan	China	Korea (South)	Panama	Ukraine
Bangladesh	Croatia	Laos	Philippines	United Arab Emirates
Belarus	Cuba	Latvia	Poland	United Kingdom
Belgium	Czech Republic	Luxembourg	Portugal	Uruguay
Brunei	Denmark	Macao	Qatar	Uzbekistan
Bulgaria	Estonia	Malaysia	Romania	Venezuela
	Finland	Mongolia	Russia	
	France	Morocco	San Marino	
	Germany	Mozambique	Saudi Arabia	
	Hong Kong	Myanmar	Serbia	
	Hungary	Netherlands	Seychelles	
	Iceland	New Zealand	Singapore	
	India	Norway	Slovakia	
	Indonesia	Oman	Spain	
	Iran		Sri Lanka	
	Ireland		Sweden	
	Israel		Switzerland	
	Italy			
	Japan			



## Brunei

### Labor law

The Employment Order of 2009 legislates the minimum terms and conditions of employment in Brunei. The Order covers those employed under a contract of service but excludes seamen, domestic servants, as well as those employed in a managerial or executive position. Civil servants are also excluded from this Order.

### Relevant visa categories

#### Employment visa

Foreigners looking to work in Brunei need a valid employment visa from the Department of Immigration and National Registration. To hire foreign employees, there are several prerequisites that employers need to meet.

#### Requirements to apply for an employment visa

The previous regulation on 'foreign quota' on recruiting foreign employees was replaced by the Lesen Pekerja Asing (LPA) (foreign worker license) in 2018. It takes seven working days to issue this license from 41 days previously. As part of the LPA process, companies will first need to register themselves as well as advertise any job vacancies on the JCB online platform for a minimum of two weeks.

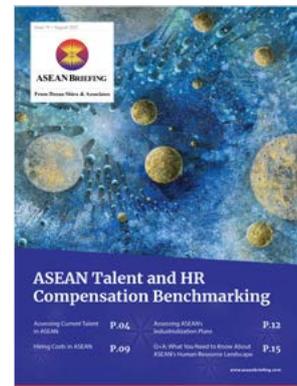
The JCB will provide the company a list of qualified local candidates, but if these are not suitable, then the JCB will issue a clearance letter to the company, which can then be taken to the Department of Labor who will issue the LPA in seven working days.

The documents required for an LPA are as follows.

- Two copies of foreign worker application form;
- A copy of the identity card; passport for each applicant, owner or partner in the company;
- A copy of the valid passport for every applicant;
- Copies of approval letters from relevant government agencies (if applicable);
- A list of local employees verified by the TAP;
- Verification of mandatory registration from JobCentre Brunei;
- A copy of certificate equivalent to the occupation should the occupation require qualifications;
- A copy of the tenancy agreement for office, or company and worker residence (If applicable); and
- In case of construction activities, attached copies of ongoing or upcoming projects.



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*ASEAN Briefing Magazine*  
August, 2021

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## Applying for a work visa

Upon the approval of an LPA, foreign workers can now apply for a work visa at the Department of Immigration & National Registration. The following documents are required:

- An application letter from the employer;
- A visa application form;
- Form 23;
- 2 passport-sized photos;
- Photocopy of identity card;
- Approved Foreign Workers License (original & a photocopy);
- Job Order from Department of Labor; and
- Employment Agency Representative Card.

The processing time takes three to five days. Malaysian and Singaporean citizens are exempt from requiring a work visa.

## Applying for a work pass and identification card

Before foreign employees can begin working in Brunei, they must undergo a pre-employment medical examination at accredited health centers in the country, as per the conditions set out by the Ministry of Health.

Once the medical report has been received and approved, foreign workers can apply for a work pass using the same documents as the ones required for the visa application. The work pass application procedure takes three to five days.

Once the applicant has received their work pass, they can apply for an identification card (IC) by submitting the following documents:

- Identification card application form; and
- The travel document containing a photo page and the work pass from the Department of Immigration and National Registration (original and photocopy).

After the documents are verified and the application is approved, the applicant may collect the work pass from the relevant Brunei diplomatic mission. The pass is valid for a period of two years and can be renewed for another two years at a time.

## Business visit visas

A business visit visa is a short-term visa issued for applicants undertaking business related activities in Brunei.

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It is the responsibility of the Brunei-registered company or government agency to apply on behalf of the applicant, which includes a supporting letter in addition to supporting documents from the applicant.

## Professional visit visas

As with a business visit visa, the professional visa is a short-term visa, but issued for professional expertise for a project in Brunei.

It is also the responsibility of the Brunei-registered company or government agency to apply on behalf of the applicant, which includes a supporting letter in addition to supporting documents from the applicant.

## Social insurance

The employer is obligated to contribute five percent of the employees' wages to the Employees Trust Fund and 3.5 percent of the monthly salary for the Supplementary Pension Fund. These rules only apply to citizens and permanent residents of Brunei.



# Cambodia

## Labor law

Cambodia's Labor Law provides the legal landscape for the rights and obligations of the employer and employee. The Law was amended in 2018 and 2019 to include seniority payments, severance payments, and the introduction of bimonthly salary payment system.

The latest amendments were in 2021 and includes allowing enterprises to divide scheduled work hours into three shifts, and the provision that individual labor disputes can now be brought to court if the disputing parties cannot settle with the labor inspector.

## Key amendments to labor law

Under the amendments there are a number of pro-employee initiatives employees should be aware of.

### *Seniority payments*

Employers are no longer required to pay compensation for dismissals, but instead must pay seniority payments to the employee. Employees who have worked for at least one month are entitled to seniority payments equal to seven and a half days of wages and benefits.



The second component to this scheme requires employers to pay seniority back payments for the employment period before 2019. This is calculated at a rate of 15 days of wages and benefits for each year of service before 2019.

Employees who resign are not entitled to seniority back payments.

#### ***Fixed duration contracts and renewals***

The Ministry of Labor and Vocational Training (MVLTV) has set out the initial fixed duration contracts (FDC) for local and foreign employees at two years. The contract can be renewed so long as the total duration of the renewal does not exceed two years.

#### ***Employment contracts for foreign workers***

Employers can now submit the Khmer-language translations of the company's employment contracts when they are applying the work permits for foreign employees.

#### ***Severance payments***

Employers are required to pay severance payments to employees at the end of their fixed-term contracts. The severance pay is equivalent to five percent of the wages that the employee received during the length of the contract.

#### ***Bimonthly salary payments***

Salary payments are now paid twice a month with the first payment made between the 16<sup>th</sup> and 18<sup>th</sup> of every month and the second payment made between the first and seventh of the following month.

#### ***Work shifts***

Enterprises can now divide the work schedule into three shifts (morning, afternoon, and night) with each shift not exceeding eight hours (the maximum daily work hours). Previously the law only allowed the division of two shifts (morning and afternoon).

The government hopes this will attract more modern industries, such as electronics production and processed foods manufacturing, into Cambodia. Importantly, the amendments do not erase the pay rate for employees working regular nightshifts.

The rate for regular nightshifts (from 10 pm to 5 am) is 200 percent of normal wages. Employers must also continue to provide other additional benefits and health allowances to employees who regularly work night shifts.



### *Labor dispute resolution*

Under this article, the jurisdiction of the Labor Arbitration Council has been expanded to also resolve individual labor disputes. Previously, the Arbitration Council only had jurisdiction over collective labor disputes.

In an individual labor dispute, the disputing parties can file a complaint to the labor inspector to seek conciliation. If the disputing parties are unable to settle through conciliation by the labor inspector, the concerned party can file a complaint to the Labor Court or with the Arbitration Council.

Through this mechanism, the government aims to settle individual labor disputes more efficiently in addition to promoting more harmonious industrial relations. Under the old article, any individual dispute could only be referred to the labor inspector of their province.

The formalities related to the new procedure for filing individual labor disputes will be issued in a later Prakas (decree).

### *New powers for the labor inspector*

This new provision empowers the labor inspector as a judicial officer to monitor any employment offenses as stated in the Labor Law. The legal procedures will be determined in an inter-ministerial Prakas, which is yet to be issued.

### *Cancellation of compensated days off in lieu*

Previously, to compensate for any public holiday that falls on a Sunday, workers were given a day off in lieu of the following business day. Under Article 162, workers are no longer entitled to this provision. This may essentially reduce the number of annual public holidays each year, depending on how many falls on a Sunday.

Further, any work performed on a public holiday must be under the supervision of the labor inspector. If the company intends to have employees work on a public holiday, they must apply for permission to the Ministry of Labor and Vocational training (MLVT). The changes are part of the government's continuing efforts to improve productivity in Cambodia. In fact, the MLVT has been steadily reducing the number of public holidays since 2018. There were 28 public holidays in that year, 22 in 2020, and 21 days in 2021.

## Relevant visa categories

### Foreign employee quota

Businesses in Cambodia employing or intending to employ foreign employees must apply for a foreign employee quota to the Ministry of Labor and Vocational Training (MLVT). The MLVT imposes a maximum 10 percent quota of an employer's total workforce for the use of foreign employees. This comprises office employees (three percent), skilled labor (six percent), and unskilled labor (one percent).

### E-visas

Foreign workers looking to work in Cambodia will need a valid business visa (E-class visa). The E-class visa that is initially valid for a period of 30 days. The visa can be extended for a period of one month, three months, six months, or maximum a year at a time, by filing an application at the immigration department of the Ministry of Interior (Mol).

The six- and 12-months visas allow applicants multiple entries into Cambodia, while the one month and three-month visas permit single entry.

E-visas can be obtained at the employee's nearest Cambodian embassy as well as upon arrival at Phnom Penh international airport.

There are several E-class visa extension categories, which include:

- **EB visa** – the most common type of E-class visa issued to foreign nationals planning to work in Cambodia. It covers foreigners who are working in the country or want to start a business; freelancers; foreign employees' non-working partner and dependent children; or any other foreigner who wants to stay in Cambodia for more than a month;
- **EP visa** – an EP visa is issued to foreign nationals looking for a job, or considering starting a business in Cambodia, after the expiry of their initial 30 days stay under the E-class visa. The EP is extendable up to three months. Foreigners unsuccessful in gaining employment within these three months are not permitted to continue their stay in the country;
- **EG visa** – this general visa applies to foreigners looking for work in the country. The duration can be for one, three, or six months;
- **ES visa** – the visa is issued for international students going to school or university in Cambodia; and
- **ET visa** – This is a visa extension for technicians or work in specific industries.

To extend the E-class visa, foreigners need the following:

- 
- A passport with at least six months validity;
  - A blank page in the passport;
  - One passport-sized photo; and
  - A renewal fee in US dollars.

## Work permit

In addition to an E-visa, a foreign worker must also obtain a work permit and employment card. This is the responsibility of the employer who will apply through the MVLTV.

### Requirements to apply for a work permit

The company will need to provide the following information to the MVLTV:

- Certificate of incorporation with company stamp;
- Registered business address;
- Tax patent with company stamp;
- Foreign employee quota approval;
- An approval from the Ministry of Commerce; and
- An article of incorporation of the company.

The documents required at the employee level:

- Three sets of application form as issued by the MOI;
- Copy of passport with valid visa;
- Three photographs (4×6);
- Health certificate; and
- Written work contract from the employer.

Companies – foreign owned or domestic – are restricted in the number of foreigners they can employ under the quota system.

Under the quota system, the number of foreigners employed in a company is subject to a maximum of 10 percent of the company's total workforce. This quota may be increased, at the discretion of the MVLTV, if the company requires employers with a specific skill set that is currently unavailable in Cambodia.

## Social insurance

Employers must make Occupational Risk Contribution (ORC) payments to the National Social Security Fund (NSSF)

ORC payments are set at 0.8 percent of the employee's average monthly salary, capped at



US\$240 per employee. The contribution for healthcare to the NSSF is the obligation of the employer, at 2.6 percent of the employees' monthly wage.

In March 2021, Cambodia introduced Sub-Decree 32 which implements a new pension scheme in the country. Before Sub-Decree 32, only schemes related to occupational risks and healthcare were enforced.

Under the current social security scheme, employers with one or more employees must register themselves and their employees with the National Social Security Fund (NSSF) within 30 days of operating. The NSSF provides three schemes:

1. Occupation risk insurance – work-related accidents;
2. Healthcare insurance; and
3. Pension scheme.

The NSSF first implemented the occupational risk insurance scheme in 2008 followed by the healthcare insurance in 2016. In 2019, the government introduced the Social Security Scheme, but its implementation has been pending.

Sub-Decree 32 introduces the mechanism and procedures, contribution rate, and benefit claim for the four types of pension schemes provided under the decree. These are:

- Old-age pension;
- Disability pension;
- Survivor's pension; and
- Funeral allowance.

### **What are the conditions for eligibility?**

#### *Old-age pension*

To be eligible, the NSSF member must be registered under the pension scheme, must be at least 60 years of age, and have made contributions to the pension fund for at least 12 months.

#### *Disability pension*

To be eligible, the NSSF member must be registered under the pension scheme and have made contributions to the pension fund for at least 60 months before becoming disabled.

#### *Survivor's pension*

The benefits are given to family members on the death of an NSSF member who has made contributions to the pension fund for at least 60 months.

### *Funeral allowance*

The allowance is given only on the death of a person who is eligible for the old-age or disability pension.

Sub-Decree 32 stipulates that companies that have not registered with the NSSF must do so within 30 days of the effective date of the decree and that their employees must also be registered within three days of commencing employment.

### **What are the components of the pension scheme?**

The pension scheme consists of two components:

1. The compulsory pension scheme; and
2. The voluntary pension scheme.

### **The compulsory scheme**

Under the compulsory scheme, the contribution rate will be borne 50 percent by the employer with the remaining 50 percent by the employee.

The contribution rates will be done in three states, as follows:

- 1<sup>st</sup> stage – four percent of the contributable wage (wages before tax deductions) whereby the employer will contribute two percent and each employee two. This will be implemented for the first five years of the scheme;
- 2<sup>nd</sup> stage – eight percent of the contributable wage, whereby the employer will contribute four percent and each employee four. This will be implemented after the first stage is completed and for five years; and
- 3<sup>rd</sup> stage – there will be subsequent increases of 2.75 percent every ten years.

Employers are obligated to remit their pension contributions to the NSSF by the 15th of the following month and the contribution report – which includes the number of employees – must be submitted on the 20th of the following month.

### **The voluntary scheme**

NSSF members can also request to participate voluntarily in the pension scheme if they meet the following conditions:

- The applicant is under the age of 60 and unemployed, but is still able to make the pension payments;

- 
- The applicant is under the age of 60 and wishes to pay the monthly contribution to receive a much higher old-age pension than the amount they are receiving under the compulsory pension scheme; or
  - Have income higher than the wage ceiling.

The rate of the contribution under the voluntary scheme must be equal to or greater than that paid under the compulsory pension scheme.

## Indonesia

### Labor law

The main sources of employment and labor laws in Indonesia are:

- Labor Law of 2003 on Manpower as recently amended by Law No. 11 of 2020 on Job Creation;
- Law No. 21 of 2000 on Labor Union; and
- Law No. 2 of 2004 on Industrial Relations Dispute Settlement.

### Fixed term contracts

One of the amendments made through the Job Creation Law, also known as the Omnibus Law, is changes to fixed-term employment contracts. Under implementing regulation 35 of 2021 (GR35/2021), the government recognizes three types of fixed-term contracts (FTC):

- FTC based on the completion of work;
- FTC based on the period of time; and
- FTC related to non-permanent work.

GR 35/2021 states that all FTC types are for work that is temporary and can be completed within a set time period, therefore any contract extensions cannot be for prolonged periods (for example, 10 years). Failing to adhere to these rules will result in the employee deemed to be on a permanent employment contract.

## Indonesia's New Fixed-Term Contract System

	FTC based on completion of work	FTC base on period	FTC related to non-permanent work
<b>Type of work</b>	<ul style="list-style-type: none"> <li>• Temporary work; or</li> <li>• One-time work</li> </ul>	<ul style="list-style-type: none"> <li>• Work that can be completed in short time;</li> <li>• Seasonal work; or</li> <li>• Work related to new products that are in in trial or experimentation.</li> </ul>	<ul style="list-style-type: none"> <li>• Work that is based on attendance; or</li> <li>• Work that changes based on volume or time.</li> </ul>
<b>Contract period</b>	There is no specific maximum period, however, the employment agreement must include provisions on the expected period for work completion.	Maximum five years (including extension).	Maximum 20 days per month. If the employee works for 21 days per month or more for three consecutive months, then they will be considered permanent workers.

### Compensation for FTC workers

Prior to the Omnibus Law, any party terminating the FTC was required to pay the other party compensation equivalent to the employee's salary for the remaining time of the FTC. If an FTC expired naturally, then neither party would have to pay compensation.

This has changed with GR 35/2021, which now obligates the employer to pay compensation to the employee, even if the employee terminates the FTC prematurely.

The employers must pay compensation upon:

- The expiry of an FTC;
- Each extension of the FTC; and
- Early termination of the contract, irrespective of who terminates the contract.

#### *How is it calculated?*

Compensation is calculated using the following formula:



When an FTC expires and is then extended, the compensation for the initial contract must be paid when the FTC expires.

For any ongoing FTCs, the compensation payment will be calculated from November 2, 2020, the date from which the Omnibus Law came into effect. Further, foreign workers are not entitled to the aforementioned compensation.

### **Working hours**

Normal working hours in Indonesia is 40 hours per week, which can be divided into eight hours per day for five working days or seven hours per day for six working days.

GR 35/2021 recognizes working hours of less than 40 hours per week if the company has the following characteristics:

- Undertake work that can be completed in less than 35 hours per week;
- Are able to implement flexible working hours; and
- Undertake work that can be completed outside a particular location.

### **Overtime**

The regulation extends the overtime working hours to four hours per day and 18 hours per week, which does not apply to public holidays. GR 35/2021 requires that collective labor agreements, company regulations, or employment agreements specifically state which roles are entitled to overtime pay. If this is not expressed, then the employee will automatically be entitled to receive this payment.

The regulation does include provisions on employees that are exempt from overtime pay eligibility. These are:

- Employees that hold certain positions with responsibilities as thinkers, controllers, planners, executors, etc.;
- Workers whose working hours cannot be capped, such as those in managerial roles; and
- Workers that are paid high salaries.

## **Relevant visa categories**

There are a variety of visas foreign visitors can apply for depending on their purpose of visit.

### **Business visas**

This is a single-entry visa valid for 60 days upon arrival and can be extended up to four times. This type of visa is intended for businesspeople who are engaging in meetings in the country, attending conferences, or undertaking market research.



This visa must be sponsored by a legal entity in Indonesia and the holders are not allowed to gain employment while in the country.

## Multiple entry business visas

Multiple entry business visas allow foreign visitors to make repeated trips into Indonesia for one year. The visa, however, has a 60-day limit upon arrival, meaning that visitors will have to leave the country before it expires before entering Indonesia again.

The requirements for obtaining this visa type is the same as that of the business visa. The fee is US\$100.

### Application requirements

The application requirements for the business visa is as follows:

- A passport valid for at least six months;
- A letter of invitation from the Indonesian-based sponsor mentioning the purpose of the applicant's visit, and length of stay. The Indonesian sponsor will also need to do an online application to the immigration office in Jakarta on behalf of the applicant;
- The process usually takes five working days by which the immigration office will issue a visa approval letter. This will then be sent to the applicant's nearest Indonesian Embassy, who will issue the visa.
- A business cover letter from the applicant's own company;
- One passport-sized photograph (white background);
- A copy of the applicant's round trip, electronic airline ticket;
- Pay the US\$50 fee; and
- A bank statement proving the applicant has at least US\$1,500.

## Working visas

A work visa (IMTA) can only be applied by the Indonesian company that will hire the foreign worker. The company must prove to the Ministry of Manpower (MOM) that the foreign applicant is required to fulfil certain positions.

Foreign employees are not allowed to obtain work in the following sectors:

- Human resource management;
- Legal;
- Health and safety;
- Quality control; and
- Supply chain management.

## Foreign worker utilization plan

On March 31, 2021, Indonesia's Ministry of Manpower issued Regulation No. 8 of 2021 (MOM Reg 8/2021) on the Employment of Foreign Workers. MOM Reg 8/2021 is an implementing regulation to GR 34/2021 and provides in detail the requirements for businesses to fulfill in order to hire foreign workers.

For a local company to employ a foreign worker, they must prepare a Foreign Worker Utilization Plan (Rencana Penggunaan Tenaga Kerja Asing (RPTKA)) – a document that details the specific work, position, and length of employment the foreign employee will undertake in Indonesia. The RPTKA now also serves as the basis for the MOM to grant visas and stay permits.

### Types of RPTKA

There are four types of RPTKA categorized under MOM 8/2021

RPTKA Categories	
RPTKA type	Validity
Temporary work (production quality control, filming work, installation of machines etc)	Valid for up to six months and cannot be extended
Employment for more than six months	Valid for up to two years with possibility for extension
Employment that does not require payment to the Foreign Worker Utilization Compensation Fund	Valid for up to two years with possibility for extension
Employment in special economic zones (SEZ)	Valid for five years with possibility for extension; or The SEZ RPTKA for directors or commissioners can be granted for a period as needed by the employer

## What is the process of hiring foreign workers in Indonesia?

It is the responsibility of the local company to apply for the RPTKA, which can be done through the online portal, under the Ministry of Manpower. The application is addressed to the Director of Foreign Manpower Utilization Management (Direktur Pengendalian Penggunaan Tenaga Kerja Asing). However, if the application is for less than 50 foreign workers – then the application is addressed to the Director-General of Manpower Placement Guidance and Expansion of Work Opportunity (Direktur Jenderal Pembinaan Penempatan Tenaga Kerja dan Perluasan Kesempatan Kerja).

## Who can apply?

According to MOM 8/2021, employers that can employ foreign workers include:

- Government institutions, international bodies, and foreign state representatives;
- Foreign trade representatives, foreign news agencies conducting activities in Indonesia, and foreign representative offices;
- Foreign private companies conducting business in Indonesia;
- Legal entities such as private limited companies established in Indonesia;
- Social, religious, or cultural institutions;
- Entertainment management entities; and
- Other business entities are allowed to employ foreign workers.

## RPTKA assessment

Once submitted, the MOM will conduct a feasibility study to see if the employer and prospective employee meet all the requirements. Employers are required to submit the following information:

- Identity of the employer;
- Reasons for utilizing a foreign worker;
- The position of the foreign worker within the company's organization structure;
- Number of foreign workers being employed;
- Contract length of the foreign employee;
- Working location of the foreign employee;
- Proof of mandatory employment reporting by the employer; and
- Statement letter affirming the following:
  - » The designation of the Indonesian employee(s) assigned as a co-worker to the foreign employee;
  - » The Indonesian employee(s) will receive training or education from the foreign employee in accordance with the position and qualifications of the foreign employee; and
  - » Ensure the foreign worker returns to their home country once their work contract expires.
- Future plans to absorb Indonesian workers.

The results of this assessment will be issued in no more than two working days.



## Personal information submission

The employer can submit the personal information and documents of the foreign worker after the RPTKA assessment or during the submission of the RPTKA documents. The personal information will be verified by the MOM within two working days.

## RPTKA approval and payment

If the documents and information declared to the MOM are correct and complete, the MOM will issue a payment notification letter for the amount of US\$100 to the Foreign Workers Compensation Fund (Dana Kompensasi Penggunaan Tenaga Kerja Asing or DKP-TKA). This amount is to be paid to the MOM every month.

Once the employer has made the payment, the MOM will issue the RPTKA approval, and the data will be sent to the Ministry of Law and Human Rights, who will process the visa and stay permits.

Payment of the DKP-TKA is waived for foreign state representatives, international bodies, religious institutions, social institutions, and certain positions in the education sector.

## Annual reporting obligations

Employers must submit an annual report to the MOM that covers the scope of the foreign worker's employment, the education or training facilitated to Indonesian co-workers, and the types of technology transfer implemented.

## RPTKA exemptions

There are RPTKA exemptions for foreign workers that are the members of the board of directors, members of the board of commissioners, diplomatic or consular staff, or are hired by the local employer in connection to emergency activities, vocational activities, or in connection to production activities of an Indonesian-based tech startup.

Specifically, for tech-based startups and vocational training activities, the RPTKA exemption lasts for no more than three months, after which the company must apply for RPTKA approval. This application must be submitted at least two weeks before the expiration of the period of employment of the foreign worker, as stated in the foreign worker employment statement letter, which is issued in place of an RPTKA approval.

The MOM will issue the IMTA, and the immigration office will issue a limited stay visa (VITAS). Upon arriving in Indonesia, the applicant must convert their VITAS into a limited stay permit Kartu Izin Tinggal Terbatas (KITAS).

## Additional requirements to obtain a VITAS

Once a foreigner has received sponsorship to work in Indonesia, they can apply for a limited stay visa (Visa Tinggal Terbatas or 'VITAS'). After the VITAS is secured, their immigration status changes to a limited stay permit (ITAS), which requires an official stamp from an immigration office.

After the VITAS is secured, their immigration status changes to an ITAS, which requires an official stamp from an immigration office.

Once the ITAS is secured, the foreign worker can receive a KITAS, which will permit them to work in Indonesia for up to 12 months. This can then be extended when the expiry date approaches.

The additional requirements to obtain a VITAS are:

- A letter detailing the applicant is of good standing from the embassy or consulate of the foreigner's country of origin; and

A health letter stating that the applicant is free from any contagious diseases.

## Changes in the length of limited stay permits

Before the changes were implemented in regulation GR 48/2021 (issued in March 2021), the limited stay permit (ITAS) was valid for a maximum of two years with the possibility to extend twice for two years each time. After six years, the foreigner must apply for a new ITAS.

Under GR 48/2021, the ITAS is now valid for five years and can be extended once for another five-year, meaning the foreigner can stay in total for 10 years. Any ITAS for work purposes that is valid for no more than 90 days can be extended up to a maximum of 180 days.

Further, expatriates who have obtained their ITAS at a designated port of entry such as airports and ports will not be required to apply for the ITAS at their local immigration office in Indonesia, as was previously stipulated. This should ease the burden on expatriates and provide added certainty.

## Permanent stay visas

The permanent stay visa Kartu Izin Tinggal Tetap (KITAP) allows expatriates to permanently stay in Indonesia. To qualify for this visa, expatriate workers would need to have held a Kartu Izin Tinggal Terbatas (KITAS) for four consecutive years, work in the same company, and having the same position. As with other visas, applicants will need a local sponsor. In addition to their employer, this could also be their spouse (who must be Indonesian).

## Conversion of stay permits

Foreigners can now convert their visit stay permit to an ITAS, or an ITAS to a permanent stay permit (KITAP), or permanent stay visa/permanent residence. The KITAP is valid for five years and is extended automatically if the status of the expat does not change.

Obtaining a KITAP means the foreigner is no longer required to make the annual trip to the immigration office, as in the case of KITAS/ITAS holders, and no more costly visa extensions.

## Introduction of the second home category

The government has now allowed foreigners who treat Indonesia as a 'second home category' to be eligible to receive a VITAS. The applicant must show evidence that they have settled in Indonesia. Further requirements will be issued in upcoming government regulations.

## Visa on arrival, social visit visas, and multiple-entry visas

Visa on arrivals is still valid for 30 days but can no longer be extended. Previously, this visa type could be extended for a further 30 days once it expired.

The single-entry visa, or the social visit visa, is issued to foreigner travelers entering Indonesia for short internship programs, volunteer programs, meeting family, sports activities, and social activities, among others. The length of this stay is for 180 days and with no extension possible. This visa type was previously valid for 60 days and could be extended four times with a maximum stay of six months.

Finally, foreigners applying for the multiple entry visa can be granted 180 days stay in Indonesia which can be extended for a total stay of no more than one year.

## New category for social visit visas

Under GR 48/2021, the government has added 'pre-investment' activities as one of the activities foreigners can undertake in Indonesia under a visit visa. This refers to foreigners looking to start a business in Indonesia, and undertaking feasibility studies, among others.

Previously, a letter from a guarantor in Indonesia was required as part of the application process. Under the latest changes, if the foreigner does not have a guarantor, then the guarantee letter can be replaced with proof of payment of an 'immigration guarantee' to the Directorate General of Immigration.

## Guarantors of expatriates

GR 48/2021 has provided an exemption for the requirement of a foreign worker in Indonesia to have a guarantor. Depending on their visa, foreigners needed a guarantor who was responsible for their activities in the country and report any change to their civil or immigration status to the authorities. This requirement was not required for foreigners legally married to Indonesians, foreign investors, or citizens of countries that also waived the guarantee requirements for Indonesians.

Foreign investors, foreigners who make Indonesia a second home, and foreigners engaged in pre-investment activities can now make an official payment to the Directorate General of Immigration which will act as their immigration guarantee.

The payment will cover the cost of repatriation, deportation, or other immigration costs. If the immigration guarantee is not used during the foreigner's stay in Indonesia, the full amount will be paid back.

## Positions open for employment for expatriate workers

On August 27, 2019, Indonesia's Ministry of Labor issued Regulation No. 228 of 2019 ("Regulation 228, 2019") to define the types of job positions foreign employees can hold in the country. The new regulation widens the number of positions open to expatriate workers, consolidates the list of positions into one, and simplifies the approval process for foreigners and their employers.

Regulation 228 lists more than 2,000 job titles across 18 sectors that can now be filled by expatriates. The job titles are taken directly from the International Standard Classification of Occupations (ISCO), issued by the International Labor Organization (ILO). The job positions and the requirements in Regulation 228, 2019 will be re-evaluated by the government in two years.

This regulation was issued as an implementing regulation for Ministry of Labor Regulation No. 10 of 2018 (Regulation 10, 2018), intended to attract highly skilled foreign employees into Indonesia. Regulation 10 was also designed to provide greater convenience for local employers – previous regulations regarding foreign workers were scattered across individual sectors.

## Social insurance

Indonesia's social security programs are run by two organizations – the Social Security

Sectors and Positions Open to Foreign Employees	
Sector	Number of Positions Available
Construction	181
Real estate	6
Education	780
Manufacturing/processing industry	70
Water and waste management, recycling, remediation	19
Art and entertainment	57
Transportation and warehousing	51
Hospitality and F&B	12
Agriculture, forestry and fisheries	10
Leasing, manpower, travel agencies, and other support services	3
Financial services and insurance	32
Health and social activities	4
Information and telecommunications	244
Mining and Excavation	592
Wholesale and retail trade, repair and maintenance of cars and motorcycles	46
Procurement of electricity, gas, geothermal, and cool air	40
Miscellaneous services	8
Professional, scientific, and technical activities	20



Administrator for Health (BPJS Kesehatan) and the Workers Social Security (BPJS Ketenagakerjaan) for pensions. The country launched its universal healthcare and pension programs in 2014, mandating every citizen and expatriate to join.

The government launched its ambitious universal healthcare and pension programs in 2014. Since its inception, the healthcare program has become the biggest in the world with more than 185 million participants. Registered Indonesians and expatriates are eligible for free health services ranging from dental care to medicines to physiotherapy. Further, patients are also eligible for free emergency and chronic care, in addition to organ transplants.

## Who is eligible?

The government has made it mandatory for all Indonesian citizens and expatriates to participate in the social security programs. Expat employees must also enroll their families in the programs.

## Classification of healthcare class facilities

The BPJS healthcare system is divided into three classes. This does not determine the level of treatment a patient receives, but it does determine the type of hospital room they will be given. Hospital rooms in Indonesia come with varying levels of comfort and size.

Class I patients are provided rooms with two or three other patients while class II patients have to share with three to six others. Class III patients will have to share with 10 or more patients.

## How to calculate the healthcare premiums for employees?

The premium for employees is calculated as five percent of the monthly salary, with a salary cap of 12 million rupiah (US\$839).

In the private sector, the employer must pay four percent and the employee the remaining one percent. For civil servants, the government contributes to three percent while the employee contributes two percent.

In addition to the employee, the premium also covers their spouse and up to three dependent children up to the age of 21.

Employees earning less than 4 million rupiah (US\$279) per month are eligible to receive Class I room facilities at the hospitals. Employees earning lower than this can receive Class II and III room facilities.

## How to calculate the healthcare premiums for non-employees?

The new premiums for individuals that are classed as non-employees/self-employed /non-formal workers is as follows:

- Class I – 150,000 rupiah (US\$10.21) per person, per month;
- Class II – 100,000 rupiah (US\$6.80) per person, per month; and
- Class III – 42,000 rupiah (US\$2.85) per person, per month (for this specific class, the government will pay 16,600 rupiah (US\$1.12) of the total amount, per person, per month)

## How to calculate the pension premium for employees?

The pension program covers the following:

- Accident compensation – provides protection for accidents occurring during or as a result of work;
- Old age benefits – provides protection for participants that are in retirement, laid off;
- Pension benefits – provides guaranteed income in retirement; and
- Life insurance – upon the death of the participant, their heirs can claim the benefits.

Under new regulation 37/2021, which was issued in March 2021, the government has unveiled new unemployment benefit program (Job Loss Security program (JLS) – the first of its kind in the country.

The JLS scheme does not however, provide universal coverage as only employees who are already registered with the Workers Social Security program will be eligible. It is the task of employers to enroll any new employees into the program. Employees who have been made redundant and are eligible for unemployment benefits will receive cash stipends for up to six months, further skills training, and career guidance information.

Employers will contribute 0.46 percent of their monthly wages to the JLS program, in which 0.22 percent is contributed by the government and the remaining 0.24 percent from the employer. Importantly, the employer's contribution is taken from the re-composition of the life insurance and work compensation components of the pension program.

Under GR 37/2021 the employer's contribution to the life insurance component has been reduced by 0.1 percent from 0.3 percent of the employee's monthly wage to become 0.2 percent. Further, the work compensation contribution has also been reduced by 0.14 percent from 0.24 – 1.74 percent to produce the new range 0.10 – 1.60 percent.

## Workers Social Security Scheme

Areas Covered	% of monthly wages		
	Employer contributions	Employer contributions after GR 37/2021	Employee contributions
Life insurance	0.3%	0.2%	-
Accident insurance	0.24-1.74%	0.10 – 1.60%	-
Old age benefits	3.7%	-	2%
Pension plan	2%	-	1%

The maximum salary used as the basis for the calculation is capped at six months' salary of 5 million rupiah (US\$352).

### What are the benefits of the program?

The program offers participants the following benefits:

Cash stipend – the participant can receive 45 percent of the monthly wage (capped at 5 million rupiah (US\$352)) for the first three months, and then 25 percent the following three months.

The program will also provide career counselling as well as online and offline training.

### Sanctions for employers

Employers who fail to register their employees to the program have to pay cash compensation to the employee as a lump sum in addition to providing job training.

## Religious holiday allowances

The payment of the religious holiday allowance (Tunjangan Hari Raya – THR) by employers to their employees is mandatory in Indonesia. This is in accordance with the Ministry of Manpower's Regulation No. 6 of 2016 (Reg 6).

### What is THR?

The THR is a yearly bonus given to employees at least one week before the start of the religious holiday observed by the employee (based on the employee's religion), equivalent to one month's salary (based on the period of employment). The recognized religious holidays for THR payment are:

- Eid-il-Fitri for Muslims;
- Christmas for Catholics and Protestants (considered as two different religions in Indonesia);
- Nyepi for Hindus;
- Vesak for Buddhists; and
- Chinese New Year for Confucianism.

The practice of many businesses in the country has been to pay the THR of non-Muslim employees prior to the Christmas holidays, and those of Muslim employees before the Eid-il-Fitri break.

## Who is eligible to receive THR and how is it calculated?

All employees, whether permanent or contract-based are eligible for THR and it must be paid using Indonesian rupiah.

The amount paid is based on the employees' service period. For employees working for more than 12 continuous months, they are entitled to THR equivalent to one month's salary.

For employees who have served one month or more but less than 12 months, the THR is calculated on a pro-rata basis using the following formula:

**$(\text{service period}/12) \times 1 \text{ month's salary}$**

Freelance workers are also entitled to THR. Those working for more than 12 continuous months must receive the equivalent of one month's salary, which is calculated on the average salary they received throughout this period.

For those working more than one month and less than 12 months, the THR is calculated based on the average monthly salary throughout the employment period.

## Fines for non-compliance

The regulation reiterates that businesses who fail to pay the THR will be fined five percent of the THR amount, which will be used for the employees' welfare. Further, this sanction does not waiver the employer's obligation to pay the THR.

In addition to financial sanctions, employers will be subject to administrative sanctions for failure to pay the THR. These are:

- Restriction of business activities;
- Permanent or temporary suspension of production facilities; or
- Suspension of business activities.



## Labor law

The Labor Law of 2013 applies to Lao and foreign employees and replaces the Labor Law of 2006. The key changes under the 2013 amendments are:

**Quota of foreign employees** – the quota for foreign employees has been increased from a ratio of 10 percent of the total workforce for manual labor to 20 percent. Further, the ratio for skilled employees has been increased from 15 percent to 25 percent of the total workforce.

**Requirements for foreign employees** – foreign employees are required to meet certain requirements in order to work in Lao. This includes being over the age of 20 years, possessing the correct skills for the position, and possessing no criminal records.

**Duration of employment contracts** – employees under fixed term contracts of three years or are renewed for more than three years are considered indefinite-term employees.

**Working hours** – the number of working hours of 48 per week did not change from the 2006 Law. However, shifts are limited to the same time as the prescribed working hours, and overtime compensation for working on an official holiday or weekly rest day from 16:00 to 22:00 has increased to 300 percent of the employee's hourly wage.

Moreover, overtime compensation for working between 22:00 to 06:00 has increased to 350 percent of the employee's hourly wage.

**Severance payment** – severance pay has been fixed at 10 percent of the employee's monthly wage or the wage multiplied the number of years of employment.

**Employees representative organization** – companies that have between 10 to 50 employees must appoint an employees' representative.

**Collective bargaining** – the 2013 Labor Law allows for the collective bargaining of labor contracts.

**Health and safety** – a company with 100 employees or less must establish a health and safety committee.

## Relevant visa categories

Laos issues several types of work visas to foreigners planning to work in the country, based on the type of employment and projects assumed by them. Some of these are given below:

- 
- Investor visa (NI-B2) – for foreign nationals investing in an enterprise registered in Laos; and
  - Labor visa (LA-B2) – for foreign nationals working in Laos on a fixed employment contract.

After acquiring one of these visa types, the foreign worker must apply for a work permit and stay permit.

## Investor Visa

The Investor Visa is issued to foreign nationals who have invested in an enterprise registered in Laos and possess an investment license or an enterprise registration certificate as a document of proof. The visa can be applied for by foreign investors, stockholders, directors, deputy directors, and technical officers at Laos' Ministry of Planning and Investment (MPI) through its One-Stop Service (OSS), a single-window system.

### Requirements to apply for an investor visa

The investor applies for the NI-B2 visa to the Investment Promotion Department (IOSSO) who will confirm with the Immigration and Emigration Department that the applicant is not registered as someone who is prohibited to enter the country.

The application must include the following documents:

- Proposal form of the company;
- Copy of investment license, and concession registration certificate;
- Copy of enterprise registration certificate along with tax registration certificate; and
- Copies of foreign applicant's passport.

Once this has been verified, the documents will be sent to the Consular Department of the Ministry of Foreign Affairs for the approval of the visa. The investor can collect their NI-B2 visa at their nearest consulate or at a visa-on-arrival unit of an international checkpoint in Laos.

To secure a multiple entry NI-B2 Visa with a three-month, six-month, or one-year validity – investors must first obtain an Investor Visa (NI-B2) and a Stay Permit (SP) from the relevant departments: Foreigner Management Department of Ministry of Public Security for investments approved at the federal level; and Foreigner Control Police Section of Provincial Police Headquarters for investments approved at the provincial level.

The applicant must submit a copy of the NI-B2 Visa along with investment related documents and a passport copy to secure a multiple entry visa and a SP.

The processing time for the NI-B2 Visa is 16 working days.

## Labor visa

The LA-B2 is the most common type of visa issued to foreigners living and working in Laos. It is a multiple entry visa and is available for a period of three-month, six-month, or one-year duration.

Foreign applicants must ensure that they register for the visa before entering the country from a Lao consular post located in their country of residence or home country; the visa cannot be applied for while residing in Laos.

To be eligible for the LA-B2 Visa, foreign applicants must first secure employment legally and obtain a sponsorship letter from a locally licensed and incorporated entity in Laos. The sponsoring entity is required to seek approval from the Lao Ministry of Foreign Affairs (MFA) in the capital Vientiane and present a financial guarantee for the prospective foreign employee.

### Requirements to apply for a labor visa

The application must include the following documents:

- Proposal form of the company;
- Quota approval for foreign employee;
- Approval of foreign employee import;
- Copy of investment license, and concession registration certificate;
- Copy of enterprise registration certificate along with tax registration certificate; and
- Copies of foreign applicant's passport.

As with an NI-B2 visa, the Immigration and Emigration Department will undertake background checks to verify that the applicant is eligible to enter the country. The Consular Department of the Ministry of Foreign Affairs will then approve the visa. The applicant can collect the visa at a Lao consulate or at a visa-on-arrival unit.

## Work Permit and Stay Permit

A Work Permit is issued by the Ministry of Labor and Social Welfare, and an SP by the Immigration Department, Ministry of Public Security. The application for the Work Permit and SP must be registered by the employer who is sponsoring the foreign applicant.

Documents required for the registration and issuance of Work Permit for foreign workers are as follows:

- Approval for importing foreign workers;
- Copy of the applicant's passport and visa (visa LA-B2);
- Passport photographs;
- Copy of the entity's registration certificate; and
- The proposal form of the company.

As per the law, a foreign worker must meet the following conditions to be employed in Lao PDR:

- Must be over the age of twenty years;
- Must possess skills and a professional level consistent with the required position;
- Must not possess a criminal record; and
- Be in good health.

An employment contract for foreign employees is valid for an initial period of 12 months and can be extended for another 12 months up to a maximum of five years.

## Social insurance

The employee must contribute 5.5 percent of their monthly wage, capped at 4.5 million kip (US\$413), to the Social Security Fund. The employer's contribution is 6 percent of the employee's wage.



## Malaysia

The Employment Act of 1955 governs employment laws in Malaysia and sets out the minimum benefits that are afforded to employees; however, it does not apply to every employee.

The protections provided under the Employment Act only apply to these categories of employees:

- Those earning less than 2,000 ringgit (US\$481) per month or below;
- Employees employed as manual labor or as supervisors of manual laborers, regardless of salary;
- Employees engaging in the maintenance and operation of mechanically propelled vehicles;
- Those employed as domestic servants; and
- Those employed on seagoing vehicles (subject to certain conditions).

Employees not covered under the Employment Act will be governed by the terms set out in their employment contracts. There are several mandatory statutory requirements that employers have to adhere to such as contributing to social insurance premiums as well as not retiring an employee before they reach the minimum retirement age (60 years).

## Relevant visa categories

Foreign workers who wish to be employed by a company within Malaysia will have to have their application reviewed by the relevant government agencies, such as the Ministry of Manpower. The employee's sponsoring company must also work with the government to ensure that the worker is approved for entry.



The Malaysian government generally issues three different types of work permits:

- Employment pass;
- Temporary employment pass; and
- Professional visit pass.

## Employment pass

This work permit enables foreign workers to take up employment under a contract of service with an organization in Malaysia. This pass is issued to employees with specific skills, usually for technical or managerial jobs.

The employment pass is classified into three categories:

### *Category I*

Applicants must receive a monthly base salary of 10,000 ringgit (US\$2,410) or more and have an employment contract of up to 60 months.

Applicants may bring eligible dependent(s) and/or foreign domestic helper(s), subject to approval and the employment pass may be renewed.

### *Category II*

Applicants must receive a monthly base salary of above 5,000 ringgit (US\$1,200) and under 10,000 ringgit (US\$2,410) have an employment contract with a maximum validity period of 23 months. The employment pass may be renewed.

Applicants can bring eligible dependent(s) and/or foreign domestic helper(s), subject to approval.

### *Category III*

Employment pass category III is available to foreign nationals working on contracts of 12 months or less and with monthly salaries ranging from 3000 ringgit (US\$723) and under 5,000 ringgit (US\$1,200). The employment pass may be renewed up to two times. Applicants are not allowed to bring dependent(s) and/or foreign domestic helper(s).

## **Requirements to apply for an Employment Pass**

It is the responsibility of the employer to apply for an employment pass on behalf of the foreign employee.

The employer must first apply for an 'expatriate post' at one of the following government agencies:

- 
- Multimedia Development Corporation – for jobs in the technology sector;
  - Malaysia Industrial Development Authority – for manufacturing and services sectors;
  - Malaysian Biotechnology Corporation – for jobs in the biotechnology sector;
  - Central Bank of Malaysia – for sectors of finance, banking, and insurance;
  - Securities Commission – for the securities and futures market sectors; and
  - Expatriate Committee – for sectors that are not under the above.

Once the expatriate post has been approved, the employer can then submit the employment pass application to the Immigration Department of Malaysia.

- The employer will need to submit the following documents to the Immigration Department;
- The Employment Pass application form;
- Copy of passport;
- Letter of approval from the relevant authority body;
- Employment contract;
- CV and education certificates; and
- The employer's company profile.

## Temporary employment pass

Malaysian companies requiring the immediate services of semi-skilled foreign workers in specific sectors can obtain a temporary employment pass, also known as a visitor's pass. The pass is valid for a period of 12 months and employers can apply for an extension on a yearly basis for up to 10 years.

There are two types of temporary employment passes in Malaysia:

- For foreign workers in the construction, plantation, agriculture, manufacturing, and services; and
- Foreign domestic helpers.

Further, this work permit is open only to the citizens from the approved countries:

- Bangladesh – only allowed to work in plantation sector through government to government agreements;
- Cambodia;
- India – citizens are not allowed to work in the manufacturing sector;
- Indonesia – male citizens are only allowed to work in the manufacturing sector whereas females can work in all sectors;
- Kazakhstan;
- Laos;
- Myanmar;
- Nepal;

- 
- Pakistan;
  - Philippines – female citizens are prohibited from working in any sector;
  - Sri Lanka;
  - Thailand;
  - Turkmenistan;
  - Uzbekistan; and
  - Vietnam.

### **Requirements to apply for a temporary employment pass**

As with employment passes, it is the duty of the employer to apply for the temporary employment pass on behalf of the foreign applicant.

The employer will also need to apply for a visa approval letter from the Immigration Department of Malaysia.

The employer will need to provide the following documents:

- VDR application form;
- An approval letter from the Ministry of Home Affairs regarding the quota approval;
- IM.12 and IM.38 visa application forms;
- Receipt of payment for levy;
- Security bond – insurance guarantees/bank guarantee;
- Copy of the foreign applicant's passport;
- Passport-sized photo of applicant;
- Medical certificate issued from a medical center in the applicant's country of origin (valid for three months);
- Foreign Worker Compensation Scheme (insurance); and
- Insurance policy of Health Insurance Protection Scheme Foreign Workers (SPIKPA) (health insurance).

After the visa approval letter is approved, the employee will then use it to apply for a visa with reference (VDR) from the Malaysian embassy (certain nationals do not need an entry visa).

In addition to the VDR, the employee will need to obtain a Immigration Security Clearance (ISC) from an ISC center in their source country.

The Temporary Employment Pass will only be issued after the employee has passed the FOMEMA (Foreign Workers Medical Examination Monitoring Agency) medical examination within 30 days of arrival. FOMEMA is the company appointed by the Malaysian government to undertake these examinations.

## Professional Visit Pass

The Professional Visit Pass is granted to foreign workers with the necessary qualifications or skills to work in Malaysia on a temporary basis for up to 12 months.

They can only provide their services to a Malaysian company on behalf of an overseas company and are not allowed to apply for a dependent's pass.

### Requirements to apply for a Professional Visit Pass

The application must be made by the sponsor company in Malaysia to the Immigration Department by submitting the following documents:

- Copy of passport of foreign employee;
- IM.12 and IM.38 visa application forms;
- Letter of offer from Malaysian company;
- Sponsor's company profile;
- Academic certificates (for international students);
- Letter of approval from the Department of Religion and the Islamic Religious Department (for religious missionaries); and
- Bank guarantee (if you are a Chinese citizen).

Once the professional visit pass has been approved, the employee can then apply for the VDR (certain nationals do not need an entry visa) to enter the country.

After arrival in Malaysia, the employee must visit the Immigration Department of Malaysia to receive the professional visit pass sticker on their passport.

### *Who is eligible?*

- People under the following categories are eligible to apply for a Professional Visit Pass:
- Islamic missionaries;
- Foreign artists – filming and performing;
- Government officials;
- Volunteers;
- International students – under industrial training or mobility program; and
- Other religious workers – priests, granthi, gurukkal, guru dharma (these must be at least 40 years of age).

### Business visas

Malaysia does not issue business visas, and so those travelling for business purposes can do so through a tourist visa.

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To apply, the applicant must show proof of having sufficient funds while in Malaysia and must possess a valid return ticket.

## Social insurance

Employers and employees are required to make monthly contributions to the social security fund managed by the Malaysian Social Security Organization (SOCSO). Contributions are capped at the monthly wage of 4,000 ringgit (US\$963).

The monthly contributions fall under two categories:

### *Employment injury and invalidity scheme*

This scheme provides protection against accidents or occupational disease arising from one's employment and is obligatory for employees under the age of 60. The employee contributes 0.5 percent from their monthly wage while the employer contributes the remaining 1.75 percent.

### *Employment injury scheme*

Employees who have reached the age of 60 will have to contribute 1.25 percent of their monthly wage to this scheme, payable by the employer. The scheme provides protection against someone who has died due to their employment or suffered from invalidity due to their employment.

### *Foreign workers obligated to contribute*

From January 2019, foreign workers were obligated to register under SOCSO and make the monthly contributions, whereas prior to this they were not forced to do so.

The employer will incur a 1.25 percent charge calculated on the worker's salary.



## Myanmar

### Labor law

Myanmar is governed by various employment laws and many of the laws from the colonial period have survived. These are:

- The Leave and Holiday Act of 1951 (amended in 2006);
- The Overseas Employment Law of 1999;

- 
- The Labor Organization Law of 2011;
  - The Labor Organization Rule of 2012;
  - The Settlement of Labor Dispute Law and Rules of 2012;
  - The Social Security Law of 2012;
  - The Social Security Rule of 2012;
  - The Minimum Wages Law of 2013;
  - The Minimum Wages Rule of 2013;
  - The Employment and Skill Development Law of 2013;
  - The Amended Settlement of Dispute Law of 2014;
  - The Amended Leave and Holiday Law of 2014;
  - The Amended Factory Act of 2016;
  - The Payment of Wages Law of 2016; and
  - The Amended Shop and Workplace Law.

The country continues to embark on a comprehensive reform process. Foreign investors and workers should thus monitor the policies and practices issued by the Ministry of Labor, who not only provide interpretations of existing laws but also impose additional requirements on employers and employees

## Relevant visa categories

Initially, most foreign workers acquire a single-entry business visa valid for a 70 day stay. A multiple entry business visa can be acquired if the applicant has already had at least two single entry business visas and has not violated any immigration laws.

### Business visa

The criteria for awarding a multiple entry business visa are not set in stone, but rather determined on a case-by-case basis. In some cases, authorities might only require one previous single-entry visa, while in other cases they may require three.

Citizens from 50 different countries are eligible to apply online for a 70-day single entry business e-visa. E-visas require entry into the country through Yangon, Mandalay, or Nay Pyi Taw airports. Only nationals from Cambodia, Indonesia, Laos, the Philippines, Singapore, Thailand, and Vietnam can arrive in Myanmar visa-free, with a maximum stay of 14 days.

#### Requirements to apply for a business visa

The following documentation is required when applying for a business visa:

- A recommendation letter from the employer, including details about the type of business, purpose of visit, applicant's name, passport details, position in company, and intended entry and exit dates;

- Invitation letter from a Myanmar registered company on its official letterhead;
- A guarantor from the Myanmar registered company who is the one officially inviting the applicant. The guarantor must be the managing director or owner of the company and must give a copy of the Myanmar company registration certificate. The guarantor may be contacted by the immigration authorities during the application process;
- Visa application form;
- Two recent color photographs with white background size 35mm x 45mm; and
- Passport valid for at least six months and a copy of the passport details page.

## Stay Permits and multiple journey special re-entry visa

Although business visas are limited to 70 day stays regardless of whether they are single or multiple entry classification, a stay permit, or multiple journey special re-entry visa can be acquired to extend the total stay period.

The Stay Permit is not a separate visa, but a special permit that removes the 70-day limit on visas, allowing a foreign worker to remain in Myanmar for lengths of either three months, six months, or one year.

However, the Stay Permit is only valid for one entry, even if the holder has a valid multiple entry visa. In order to keep the Stay Permit valid when leaving Myanmar, a Multiple Journey Special Re-entry Visa must be obtained. The Multiple Journey Special Re-Entry Visa is also valid for either three months, six months, or one year.

To be eligible for the Multiple Journey Special Re-Entry Visa, the applicant must have traveled to Myanmar on a business visa a minimum of three separate times and present evidence that they are employed as a consultant, director, or manager.

### **Requirements to apply for Stay Permit or Multiple Journey Special Re-Entry Visa**

The following documents are required:

- A recommendation letter from the employer, including details about the type of business, purpose of visit, applicant's name, passport details, position in company, and intended entry and exit dates;
- Invitation letter from a Myanmar registered company on its official letterhead;
- Applicant's CV;
- Authorization letter notarized and legalized by the relevant Myanmar Embassy or Consulate;
- Company documents, including certificate of registration, permit, company affidavit;
- Visa application form;
- Two recent color photographs with white background size 35mm x 45mm; and
- Passport valid for at least six months and a copy of the passport details page.

## Work permits

Companies established under the Myanmar Foreign Investment Law (MFIL), or set up under the Myanmar Special Economic Zone Law (MSEZL), can apply for work permits for employees in managerial or supervisory roles or for those holding technical skills.

To do so, a company must have an investment permit and receive an endorsement to employ foreign workers from the Myanmar Investment Commission (MIC). Alternatively, if a company is operating under the MSEZL, they can apply at the zone's One Stop Service Center (OSSC).

In order to acquire a work permit, the applicant must be in good health, have a letter of recommendation from their employer, and hold a degree that is regionally or internationally recognized in relation to their employment as proof of expertise.

Even with a work permit, foreign workers will still need to acquire a Stay Permit, or Multiple Journey Special Re-Entry Visa.

## Social insurance

Under the Social Security Act of 2012, companies with more than five employees are required to provide social security benefits, such as healthcare as well as insurance against employment-related injuries.

The employer is obligated to contribute three percent of an employee's basic salary, capped at 9,000 kyat (US\$5), whereas employees contribute two percent of their total salary, capped at 6,000 kyat (US\$3.36).



# Philippines

## Labor law

The *Labor Code* is the main employment statute in the Philippines and the Department of Labor and Employment (DOLE) is the administrative entity in the field of labor and employment.

Foreign nationals planning to work in the Philippines are required to secure a work visa, which can be obtained from the Philippines' Bureau of Immigration (BI), as well as an Alien Employment Permit (AEP) issued by DOLE.

## Employment permit and relevant visa categories

### Alien employment permit

An Alien Employment Permit (AEP) authorizes a foreign national to work in the Philippines.



Though not a work permit, AEP is an important legal document required to secure a work visa in the country.

Some foreign nationals are exempted from obtaining an AEP. These include:

- All members of the diplomatic service and foreign government officials;
- Owners and representatives of foreign principals whose companies are accredited by Philippines Overseas Employment Administration (POEA); and
- Permanent resident foreign nationals and probationary or temporary resident visa holders under the Philippines' immigration law.

Besides, foreign nationals working in the Philippines whose employers are located abroad, or those who do not have an employer are also excluded from securing an AEP.

An AEP is valid for a year, or for the complete duration of the employment contract not exceeding three years. However, the issued AEP is valid only for the position and company that it was secured for. A new AEP must be secured in the event an employee assumes a new job position within the same company or joins a new company.

The application for an AEP may be filed by the employer or the foreign nationals themselves.

#### **Requirements to apply for an AEP**

- Application form;
- Photocopy of employee's passport with valid visa;
- All documents related to the contract of employment;
- Photocopy of current AEP (in cases of reissue); and
- Photocopy of mayor's permit or photocopy of business permit.

## Pre-arranged Employment Visa or 9 (G) visas

The most common type of work visa issued in the Philippines is the 9 (G) visa, also known as the Pre-arranged Employment Visa. It allows employers in the country to employ foreign nationals with skills, qualifications, and experience that may be in short supply in the country. The issuance of the 9 (G) visa falls within the competences of the BI.

A 9 (G) visa is applied through an employer's sponsorship. Therefore, securing a job with a Philippines-based company is a prerequisite. Further, applicants are also required to obtain an AEP before securing a 9 (G)-work visa.

It is important for applicants to note that a 9 (G) holder may only work for the company that has sponsored his/her work visa. In the case of change of employer, the 9 (G) status is downgraded to a tourist visa, and foreign workers are required to make a new work visa application.

A 9 (G) is valid for an initial period of one, two, or three years, and can be extended up to



three years at a time, depending on the duration of the employment contract. The validity, however, cannot exceed the period granted under the AEP issued by the DOLE. The visa can be renewed multiple times.

### **Requirements to apply for a 9 (G) visa**

- A Notarized Certification of Number of Foreign and Filipino Employees of the employer;
- Application form;
- Photocopy of employment contract, Securities and Exchange Commission (SEC) certification, and Articles of Incorporation (AOI);
- A certified true copy of AEP from DOLE;
- Original newspaper clipping showing publication of AEP application by DOLE;
- BI clearance certificate;
- Alien certificate of registration;
- Applicant's passport; and
- Other documents supporting the employment of the applicant.

### **Treaty trader's visa or 9 (D) visa**

A 9 (D) Visa or Treaty Trader's Visa is for foreign nationals belonging to countries that have a bilateral trade agreement with the Philippines. Currently, the Philippines has such an agreement with the United States, Japan, and Germany.

### **Requirements to apply for a 9 (D) visa**

To qualify for a 9 (D) Visa, foreign nationals must prove that:

- They or their employers are engaged in substantial trade, involving investment of at least US\$120,000 between the Philippines and their country of origin;
- They intend to leave the Philippines upon the completion or termination of their work contract;
- They hold the same nationality as their employer or company's major shareholder; and
- They hold a position of a supervisor or executive in the company;

The Treaty Trader's Visa is valid for up to two years.

Other nationalities who want to invest in the country can apply for special kinds of resident visas. These are:

- Special resident retiree's visa – available to international investors who are at least 35 years of age and who pay a deposit starting from US\$1,500; and
- Special investor's resident visa (SIRV) – this allows the holder to reside in the Philippines for an indefinite period. They must be willing to invest at least US\$75,000 in the country.

## Social insurance

The employer must make social security contributions to the Social Security System (SSS) on behalf of the employee. This monthly amount corresponds to the salaries of the covered employees.

The SSS premium for employers and employees will differ depending on the employee's monthly compensation bracket. The SSS was scheduled to increase the premium rate by one percent for 2021 in accordance with the Social Security Act of 2018, which was signed by the President in 2019. The act allowed the pension fund to increase the premium contribution rate by one percentage point every other year starting in 2019 until it reaches 15 percent. However, the scheduled hike for 2021 was suspended by a bill passed in February 2021.

For formal employees, the SSS contribution rate therefore remains 12 percent of the monthly salary credit. As of September 2020, the Employees' Compensation Program was expanded to include self-employed SSS members, for whom the contribution rate is also 12 percent.

There will be a monthly charge of three percent for any overdue contributions to the SSS program. Employers contribute PHP 1,600 (US\$31.71) per month for employees in the highest salary bracket. The employee themselves will contribute PHP 80 (US\$1.59) to PHP 800 (US\$15.85) based on their salary bracket.

In addition to the social security contributions, the employer and employee also must contribute to the Philippine Health Insurance Corporation (PHIC) and the Home Development Fund (HDMF). Foreign employees are no longer required to pay into the HDMF.

The maximum contribution by employers to the PHIC is PHP 900 (US\$17.84) per month and PHP 100 (US\$1.98) for the HDMF. An employee, based on their salary bracket, will pay between PHP 150 (US\$2.97) to PHP 900 (US\$17.84) per month for the PHIC and up to PHP 100 (US\$1.98) for the HDMF.

### Expected PhilHealth Contributions for the Formal Sector 2021

Monthly salary	Total premium rate (%)	Monthly premium	Employer share	Employee share
PHP10,000 (US\$208) and below	3	PHP300 (US\$6.24)	PHP150 (US\$3.12)	PHP150 (US\$3.12)
PHP10,000 (US\$208) to PHP59,999 (US\$1,249.05)	3	PHP300 (US\$6.24) to PHP1,800 (US\$3747)	PHP150 (US\$3.12) to PHP900 (US\$18.73)	PHP150 (US\$3.12) to PHP900 (US\$18.73)
PHP60,000 (US\$1,249.07) and above	3	PHP1,800 (US\$3747)	PHP900 (US\$18.73)	PHP900 (US\$18.73)

### Expected PhilHealth Contributions for the Informal Sector 2021

Monthly salary	Total premium rate (%)	Monthly premium	Yearly premium
PHP10,000 (US\$208) and below	3	PHP300 (US\$6.24)	PHP3,600 (US\$74.94)
PHP10,000 (US\$208) to PHP59,999 (US\$1,249.05)	3	PHP300 (US\$6.24) to PHP1,800 (US\$37.47)	PHP3,600 (US\$74.94) to PHP21,600 (US\$449.67)
PHP60,000 (US\$1,249.07) and above	3	PHP1,800 (US\$37.47)	PHP21,600 (US\$449.67)

### Expected SSS Contributions for Employed Members 2021

Range of compensation	Monthly salary credit	Social security contribution			
		ER	EE	EC*	Total
Below PHP 2,250 (US\$464.3)	PHP2,000 (US\$41.27)	PHP160 (US\$3.30)	PHP80 (US\$1.65)	PHP10 (US\$0.20)	PHP250 (US\$5.15)
PHP2,250 (US\$464.3)- PHP2,749.99 (US\$56.75)	PHP2,500 (US\$51.95)	PHP200 (US\$4.12)	PHP100 (US\$2.06)	PHP10 (US\$0.20)	PHP310 (US\$6.39)
PHP2,750 (US\$56.76)- PHP3,249.99 (US\$67.07)	PHP3,000 (US\$61.91)	PHP240 (US\$4.95)	PHP120 (US\$2.47)	PHP10 (US\$0.20)	PHP370 (US\$7.63)
PHP3,250 (US\$67.08)- PHP3,749.99 (US\$77.36)	PHP3,500 (US\$72.23)	PHP280 (US\$5.77)	PHP140 (US\$2.88)	PHP10 (US\$0.20)	PHP430 (US\$8.87)
PHP3,750 (US\$77.37)- PHP4,249.99 (US\$87.69)	PHP4,000 (US\$82.52)	PHP320 (US\$6.60)	PHP160 (US\$3.30)	PHP10 (US\$0.20)	PHP490 (US\$10.11)
PHP4,250 (US\$87.68)- PHP4,749.99 (US\$98)	PHP4,500 (US\$92.84)	PHP360 (US\$7.42)	PHP180 (US\$3.71)	PHP10 (US\$0.20)	PHP550 (US\$11.34)
PHP4,750 (US\$98.01)- PHP5,249.99 (US\$108.32)	PHP5,000 (US\$103.15)	PHP400 (US\$8.25)	PHP200 (US\$4.12)	PHP10 (US\$0.20)	PHP610 (US\$12.58)
PHP5,250 (US\$108.33)- PHP5,749.99 (US\$118.63)	PHP5,500 (US\$113.48)	PHP440 (US\$9.07)	PHP220 (US\$4.53)	PHP10 (US\$0.20)	PHP670 (US\$13.82)
PHP5,750 (US\$118.64)- PHP6,249.99 (US\$128.95)	PHP6,000 (US\$123.81)	PHP480 (US\$9.90)	PHP240 (US\$4.95)	PHP10 (US\$0.20)	PHP730 (US\$15.06)

### Expected SSS Contributions for Employed Members 2021

PHP6,250 (US\$128.96)- PHP6,749.99 (US\$139.28)	PHP6,500 (US\$134.12)	PHP520 (US\$10.73)	PHP260 (US\$5.36)	PHP10 (US\$0.20)	PHP790 (US\$16.30)
PHP6,750 (US\$139.29)- PHP7,249.99 (US\$149.60)	PHP7,000 (US\$144.44)	PHP560 (US\$11.55)	PHP280 (US\$5.77)	PHP10 (US\$0.20)	PHP850 (US\$17.54)
PHP7,250 (US\$149.61)- PHP7,749.99 (US\$159.93)	PHP7,500 (US\$154.75)	PHP600 (US\$12.38)	PHP300 (US\$6.19)	PHP10 (US\$0.20)	PHP910 (US\$18.78)
PHP7,750-PHP8,249.99	PHP8,000 (US\$165.10)	PHP640 (US\$13.20)	PHP320 (US\$6.60)	PHP10 (US\$0.20)	PHP970 (US\$20.02)
PHP8,250 (US\$170.24)- PHP8,749.99 (US\$180.53)	PHP8,500 (US\$175.42)	PHP680 (US\$14.03)	PHP340 (US\$7.01)	PHP10 (US\$0.20)	PHP1,030 (US\$21.25)
PHP8,750 (US\$180.54)- PHP9,249.99 (US\$190.80)	PHP9,000 (US\$185.74)	PHP720 (US\$14.86)	PHP360 (US\$7.42)	PHP10 (US\$0.20)	PHP1,090 (US\$22.49)
PHP9,250 (US\$190.81)- PHP9,749.99 (US\$201.09)	PHP9,500 (US\$196.06)	PHP760 (US\$15.68)	PHP380 (US\$7.84)	PHP10 (US\$0.20)	PHP1,150 (US\$23.73)
PHP9,750 (US\$201.10)- PHP10,249.99 (US\$211.38)	PHP10,000 (US\$206.38)	PHP800 (US\$16.50)	PHP400 (US\$8.25)	PHP10 (US\$0.20)	PHP1,210 (US\$24.97)
PHP10,250 (US\$211.39)- PHP10,749.99 (US\$221.74)	PHP10,500 (US\$216.69)	PHP840 (US\$17.33)	PHP420 (US\$8.66)	PHP10 (US\$0.20)	PHP1,270 (US\$26.20)
PHP10,750 (US\$221.75)- PHP11,249.99 (US\$232.08)	PHP11,000 (US\$227)	PHP880 (US\$18.16)	PHP440 (US\$9.08)	PHP10 (US\$0.20)	PHP1,330 (US\$27.44)
PHP11,250 (US\$232.09)- PHP11,749.99 (US\$242.43)	PHP11,500 (US\$237.32)	PHP920 (US\$18.98)	PHP460 (US\$9.49)	PHP10 (US\$0.20)	PHP1,390 (US\$28.68)
PHP11,750 (US\$242.44)- PHP12,249.99 (US\$252.74)	PHP12,000 (US\$247.56)	PHP960 (US\$19.81)	PHP480 (US\$9.90)	PHP10 (US\$0.20)	PHP1,450 (US\$29.92)
PHP12,250 (US\$252.75)- PHP12,749.99 (US\$263.06)	PHP12,500 (US\$257.96)	PHP1,000 (US\$20.63)	PHP500 (US\$10.31)	PHP10 (US\$0.20)	PHP1,510 (US\$31.16)
PHP12,750 (US\$263.07)- PHP13,249.99 (US\$273.32)	PHP13,000 (US\$268.28)	PHP1,040 (US\$21.45)	PHP520 (US\$10.73)	PHP10 (US\$0.20)	PHP1,570 (US\$32.39)
PHP13,250 (US\$273.33)- PHP13,749.99 (US\$283.67)	PHP13,500 (US\$278.60)	PHP1,080 (US\$22.28)	PHP540 (US\$11.14)	PHP10 (US\$0.20)	PHP1,630 (US\$33.63)
PHP13,750 (US\$283.68)- PHP14,249.99 (US\$293.99)	PHP14,000 (US\$288.92)	PHP1,120 (US\$23.10)	PHP560 (US\$11.55)	PHP10 (US\$0.20)	PHP1,690 (US\$34.87)

### Expected SSS Contributions for Employed Members 2021

PHP14,250 (US\$294.00)- PHP14,749.99 (US\$304.26)	PHP14,500 (US\$299.21)	PHP1,160 (US\$23.95)	PHP580 (US\$11.96)	PHP10 (US\$0.20)	PHP1,750 (US\$36.11)
PHP14,750 (US\$304.27)- PHP15,249.99 (US\$314.57)	PHP15,000 (US\$309.53)	PHP1,200 (US\$24.77)	PHP600 (US\$12.38)	PHP30 (US\$0.61)	PHP1,830 (US\$37.75)
PHP15,250 (US\$314.58)- PHP15,749.99 (US\$324.87)	PHP15,500 (US\$319.85)	PHP1,240 (US\$25.60)	PHP620 (US\$12.79)	PHP30 (US\$0.61)	PHP1,890 (US\$38.99)
PHP15,750 (US\$324.88)- PHP16,249.99 (US\$335.20)	PHP16,000 (US\$330.17)	PHP1,280 (US\$26.42)	PHP640 (US\$13.20)	PHP30 (US\$0.61)	PHP1,950 (US\$40.22)
PHP16,250 (US\$335.21)- PHP16,749.99 (US\$345.51)	PHP16,500 (US\$340.49)	PHP1,320 (US\$27.25)	PHP660 (US\$13.61)	PHP30 (US\$0.61)	PHP2,010 (US\$41.46)
PHP16,750 (US\$345.52)- PHP17,249.99 (US\$355.80)	PHP17,000 (US\$350.77)	PHP1,360 (US\$28.07)	PHP680 (US\$14.03)	PHP30 (US\$0.61)	PHP2,070 (US\$42.71)
PHP17,250 (US\$355.81)- PHP17,749.99 (US\$366.11)	PHP17,500 (US\$361.09)	PHP1,400 (US\$28.90)	PHP700 (US\$14.44)	PHP30 (US\$0.61)	PHP2,130 (US\$43.94)
PHP17,750 (US\$366.12)- PHP18,249.99 (US\$376.54)	PHP18,000 (US\$371.40)	PHP1,440 (US\$29.72)	PHP720 (US\$14.86)	PHP30 (US\$0.61)	PHP2,190 (US\$45.198)
PHP18,250 (US\$376.55)- PHP18,749.99 (US\$386.86)	PHP18,500 (US\$381.72)	PHP1,480 (US\$30.55)	PHP740 (US\$15.27)	PHP30 (US\$0.61)	PHP2,250 (US\$46.43)
PHP18,750 (US\$386.87)- PHP19,249.99 (US\$397.12)	PHP19,000 (US\$392.15)	PHP1,520 (US\$31.38)	PHP760 (US\$15.68)	PHP30 (US\$0.61)	PHP2,310 (US\$47.67)
PHP19,250 (US\$397.13)- PHP19,749.99 (US\$407.44)	PHP19,500 (US\$402.47)	PHP1,560 (US\$32.20)	PHP780 (US\$16.09)	PHP30 (US\$0.61)	PHP2,370 (US\$48.91)
PHP19,750 (US\$407.45) and above	PHP20,000 (US\$412.79)	PHP1,600 (US\$33.01)	PHP800 (US\$16.50)	PHP30 (US\$0.61)	PHP2,430 (US\$50.14)

#### Key

- Monthly salary credit – The compensation base for benefits and contributions related to total monthly earnings.
- Employer social security (ER) –Employer’s contribution
- Employee social security (EC) – Employee’s contribution
- EC\* – Contribution from the Employees’ Compensation Program which provides a range of benefits to workers and their dependents in the event of work-connected injury, sickness, or death. For employed members, EC\* is paid by the employer.

### Expected SSS Contributions for Self-employed Members 2021

Range of compensation	Monthly salary credit	Monthly contributions		
		Regular social security	EC*	Total
Below PHP 2,250 (US\$464.3)	PHP2,000 (US\$41.27)	PHP240 (US\$4.94)	PHP10 (US\$0.20)	PHP250 (US\$5.15)
PHP2,250 (US\$464.3)- PHP2,749.99 (US\$56.75)	PHP2,500 (US\$51.95)	PHP300 (US\$6.19)	PHP10 (US\$0.20)	PHP310 (US\$6.39)
PHP2,750 (US\$56.76)- PHP3,249.99 (US\$67.07)	PHP3,000 (US\$61.91)	PHP360 (US\$7.42)	PHP10 (US\$0.20)	PHP370 (US\$7.63)
PHP3,250 (US\$67.08)- PHP3,749.99 (US\$77.36)	PHP3,500 (US\$72.23)	PHP420 (US\$8.66)	PHP10 (US\$0.20)	PHP430 (US\$8.87)
PHP3,750 (US\$77.37)- PHP4,249.99 (US\$87.69)	PHP4,000 (US\$82.52)	PHP480 (US\$9.90)	PHP10 (US\$0.20)	PHP490 (US\$10.11)
PHP4,250 (US\$87.68)- PHP4,749.99 (US\$98)	PHP4,500 (US\$92.84)	PHP540 (US\$11.14)	PHP10 (US\$0.20)	PHP550 (US\$11.34)
PHP4,750 (US\$98.01)- PHP5,249.99 (US\$108.32)	PHP5,000 (US\$103.15)	PHP600 (US\$12.38)	PHP10 (US\$0.20)	PHP610 (US\$12.58)
PHP5,250 (US\$108.33)- PHP5,749.99 (US\$118.63)	PHP5,500 (US\$113.48)	PHP660 (US\$13.61)	PHP10 (US\$0.20)	PHP670 (US\$13.82)
PHP5,750 (US\$118.64)- PHP6,249.99 (US\$128.95)	PHP6,000 (US\$123.81)	PHP720 (US\$14.86)	PHP10 (US\$0.20)	PHP730 (US\$15.06)
PHP6,250 (US\$128.96)- PHP6,749.99 (US\$139.28)	PHP6,500 (US\$134.12)	PHP780 (US\$16.09)	PHP10 (US\$0.20)	PHP790 (US\$16.30)
PHP6,750 (US\$139.29)- PHP7,249.99 (US\$149.60)	PHP7,000 (US\$144.44)	PHP840 (US\$17.33)	PHP10 (US\$0.20)	PHP850 (US\$17.54)
PHP7,250 (US\$149.61)- PHP7,749.99 (US\$159.93)	PHP7,500 (US\$154.75)	PHP900 (US\$18.73)	PHP10 (US\$0.20)	PHP910 (US\$18.78)
PHP7,750-PHP8,249.99	PHP8,000 (US\$165.10)	PHP960 (US\$19.81)	PHP10 (US\$0.20)	PHP970 (US\$20.02)
PHP8,250 (US\$170.24)- PHP8,749.99 (US\$180.53)	PHP8,500 (US\$175.42)	PHP1,020 (US\$21.02)	PHP10 (US\$0.20)	PHP1,030 (US\$21.25)

### Expected SSS Contributions for Self-employed Members 2021

PHP8,750 (US\$180.54)- PHP9,249.99 (US\$190.80)	PHP9,000 (US\$185.74)	PHP1,080 (US\$22.26)	PHP10 (US\$0.20)	PHP1,090 (US\$22.49)
PHP9,250 (US\$190.81)- PHP9,749.99 (US\$201.09)	PHP9,500 (US\$196.06)	PHP1,140 (US\$23.49)	PHP10 (US\$0.20)	PHP1,150 (US\$23.73)
PHP9,750 (US\$201.10)- PHP10,249.99 (US\$211.38)	PHP10,000 (US\$206.38)	PHP1,200 (US\$24.73)	PHP10 (US\$0.20)	PHP1,210 (US\$24.97)
PHP10,250 (US\$211.39)- PHP10,749.99 (US\$221.74)	PHP10,500 (US\$216.69)	PHP1,260 (US\$25.97)	PHP10 (US\$0.20)	PHP1,270 (US\$26.20)
PHP10,750 (US\$221.75)- PHP11,249.99 (US\$232.08)	PHP11,000 (US\$227)	PHP1,320 (US\$27.20)	PHP10 (US\$0.20)	PHP1,330 (US\$27.44)
PHP11,250 (US\$232.09)- PHP11,749.99 (US\$242.43)	PHP11,500 (US\$237.32)	PHP1,380 (US\$28.44)	PHP10 (US\$0.20)	PHP1,390 (US\$28.68)
PHP11,750 (US\$242.44)- PHP12,249.99 (US\$252.74)	PHP12,000 (US\$247.56)	PHP1,440 (US\$29.68)	PHP10 (US\$0.20)	PHP1,450 (US\$29.92)
PHP12,250 (US\$252.75)- PHP12,749.99 (US\$263.06)	PHP12,500 (US\$257.96)	PHP1,500 (US\$30.92)	PHP10 (US\$0.20)	PHP1,510 (US\$31.16)
PHP12,750 (US\$263.07)- PHP13,249.99 (US\$273.32)	PHP13,000 (US\$268.28)	PHP1,560 (US\$32.15)	PHP10 (US\$0.20)	PHP1,570 (US\$32.39)
PHP13,250 (US\$273.33)- PHP13,749.99 (US\$283.67)	PHP13,500 (US\$278.60)	PHP1,620 (US\$33.39)	PHP10 (US\$0.20)	PHP1,630 (US\$33.63)
PHP13,750 (US\$283.68)- PHP14,249.99 (US\$293.99)	PHP14,000 (US\$288.92)	PHP1,680 (US\$34.63)	PHP10 (US\$0.20)	PHP1,690 (US\$34.87)
PHP14,250 (US\$294.00)- PHP14,749.99 (US\$304.26)	PHP14,500 (US\$299.21)	PHP1,740 (US\$35.87)	PHP10 (US\$0.20)	PHP1,750 (US\$36.11)
PHP14,750 (US\$304.27)- PHP15,249.99 (US\$314.57)	PHP15,000 (US\$309.53)	PHP1,800 (US\$37.10)	PHP30 (US\$0.61)	PHP1,830 (US\$37.75)
PHP15,250 (US\$314.58)- PHP15,749.99 (US\$324.87)	PHP15,500 (US\$319.85)	PHP1,860 (US\$38.34)	PHP30 (US\$0.61)	PHP1,890 (US\$38.99)
PHP15,750 (US\$324.88)- PHP16,249.99 (US\$335.20)	PHP16,000 (US\$330.17)	PHP1,920 (US\$39.58)	PHP30 (US\$0.61)	PHP1,950 (US\$40.22)

### Expected SSS Contributions for Self-employed Members 2021

PHP16,250 (US\$335.21)- PHP16,749.99 (US\$345.51)	PHP16,500 (US\$340.49)	PHP1,980 (US\$40.81)	PHP30 (US\$0.61)	PHP2,010 (US\$41.46)
PHP16,750 (US\$345.52)- PHP17,249.99 (US\$355.80)	PHP17,000 (US\$350.77)	PHP2,040 (US\$42.06)	PHP30 (US\$0.61)	PHP2,070 (US\$42.71)
PHP17,250 (US\$355.81)- PHP17,749.99 (US\$366.11)	PHP17,500 (US\$361.09)	PHP2,100 (US\$43.29)	PHP30 (US\$0.61)	PHP2,130 (US\$43.94)
PHP17,750 (US\$366.12)- PHP18,249.99 (US\$376.54)	PHP18,000 (US\$371.40)	PHP2,160 (US\$44.53)	PHP30 (US\$0.61)	PHP2,190 (US\$45.198)
PHP18,250 (US\$376.55)- PHP18,749.99 (US\$386.86)	PHP18,500 (US\$381.72)	PHP2,220 (US\$45.77)	PHP30 (US\$0.61)	PHP2,250 (US\$46.43)
PHP18,750 (US\$386.87)- PHP19,249.99 (US\$397.12)	PHP19,000 (US\$392.15)	PHP2,280 (US\$47)	PHP30 (US\$0.61)	PHP2,310 (US\$47.67)
PHP19,250 (US\$397.13)- PHP19,749.99 (US\$407.44)	PHP19,500 (US\$402.47)	PHP2,340 (US\$48.24)	PHP30 (US\$0.61)	PHP2,370 (US\$48.91)
PHP19,750 (US\$407.45) and above	PHP20,000 (US\$412.79)	PHP2,400 (US\$49.48)	PHP30 (US\$0.61)	PHP2,430 (US\$50.14)



The contribution rate is also 12 percent and as of September 2020, the Employees' Compensation Program was expanded to include self-employed SSS members. There will be a monthly charge of three percent for any overdue contributions to the SSS program.

## Christmas bonuses and 13<sup>th</sup> month pay

The 13<sup>th</sup> month pay and Christmas bonuses in the Philippines are an important aspect of HR policy that employers need to understand.

A key topic that often prompts questions is the distinction between the two systems and the tax rules surrounding them. Though both bonus payments are distinct, they can interact to create diverse tax outcomes.

### **Distinction between 13<sup>th</sup> month pay and Christmas bonuses**

The key distinction between the 13<sup>th</sup> month pay and Christmas bonuses is that the former is mandatory by law for all non-managerial staff, while the latter is at the discretion of the employer. Furthermore, the 13<sup>th</sup> month pay must be paid on or before December 24. It has become common for employers to pay half at the beginning of the school year and the rest in the days running up to Christmas. In contrast, there is no set date for Christmas bonuses to be paid; as with the amount, it is at the discretion of the employer.

## The 13<sup>th</sup> month pay

### *Eligibility*

Employees **excluded** from the 13<sup>th</sup> month pay fall into the following categories:

- Managers;
- Employees covered by civil service law;
- Housekeepers and persons in the personal service of another; and
- Employees paid on commission or task basis.

### *Calculation*

The 13<sup>th</sup> month pay can be calculated as one-twelfth (1/12) of the basic salary of the employee within one calendar year. Alternatively, if the employee is paid on a monthly basis, the following equation can be used:

$(\text{Basic Monthly Salary} \times \text{Number of Months Worked}) / 12$

## *Taxation*

The 13<sup>th</sup> month pay is exempt from tax, up to a limit of PHP82,000 (US\$1600). However, in January 2018, the government issued the Tax Reform for Acceleration and Inclusion (TRAIN) law which raised this limit to PHP90,000 (US\$1,778). If the 13<sup>th</sup> month pay exceeds this limit, the excess will be added to the salary of the employee and included in the income tax calculation.

## Christmas bonuses

### *Eligibility*

The Christmas bonus is not an enforceable obligation and can only be released at the employer's discretion. They are usually issued to show appreciation and gratitude to employees for their services during the year.

### *Taxation*

The taxation of Christmas bonuses must be split into two parts: non-performance-based bonuses (also known as 'other benefits') and performance-based incentives.

## Other benefits

'Other benefits' fall into the same category as the 13<sup>th</sup> month pay and are subject to the same PHP90,000 limit (US\$1,778). In other words, if 'other benefits' and the 13<sup>th</sup> month pay combine to a total of less than PHP90,000 (US\$1,778), no tax is to be paid. If the combination of 'other benefits' and the 13<sup>th</sup> month pay exceeds the limit, the excess will be subject to income tax.

## Taxation of performance-based incentives

Collective Bargaining Agreements (CBAs) and productivity incentive schemes are subject to a PHP 10,000 (US\$198) tax-free limit. If the performance-based bonus exceeds PHP 10,000, the whole amount (not just the excess) will be counted as 'other benefits' and included in the PHP 90,000 (US\$1,783) tax-free limit. Any excess over PHP 90,000 will be taxable.

If 'other benefits' (13<sup>th</sup> month pay and non-performance-based incentives) already exceed the tax-free limit, the performance-based incentives will automatically be subject to the normal income tax rate. For example:

- An employee earns PHP 10,000 (US\$198) in performance-related incentives – no tax is payable on this bonus;
- An employee earns PHP 15,000 (US\$297) in performance-related incentives, as well as PHP 20,000 (US\$396) in 'other benefits' – no tax is payable;

- An employee earns PHP 20,000 (US\$396) in performance-related incentives, as well as PHP 80,000 (US\$1,585) in 'other benefits' – tax is payable on the PHP 10,000 (US\$198) excess, (20,000 (US\$396) + 80,000 – 90,000 (US\$1,783)); or
- An employee earns PHP 30,000 (US\$594) in performance-related incentives, as well as PHP 100,000 (US\$1,982) in 'other benefits' – tax is payable on the PHP 30,000 bonus.



## Singapore

### Employment Act

The Employment Act (EA) is the main labor law in Singapore. The Act regulates employment terms and conditions for all employees under a work contract with an employer. The EA covers the following:

- Minimum days for giving notice of termination of contract;
- Actions employers are entitled to upon misconduct of employees;
- Salary periods, time of payment;
- Maternity protection and benefits, and childcare leave for parents; and
- Public holiday, leave, and sick leave entitlements.

### Amendments to the Employment Act

On April 1, 2019, the Singapore government enacted major amendments to the EA. The changes affect core human resource (HR) and payroll compliances termination procedures and leave allowances for employers as well as employees' rights in the workplace.

The new law affects all businesses and all employees – local and foreign – under contract with an employer in Singapore.

The amendments were designed to improve employment conditions by expanding the qualifying requirements around salary and job grades, resulting in every private sector employee now entitled to the rights and protections under the EA.

This was done to closely reflect the changing needs of the country's employment landscape, with professionals, managers, executives, and technicians (PMETs), predicted to make up some two-thirds of the country's work force by 2030 compared to just half currently. Notably, the EA also applies to foreign employees.

Those excluded under the EA are public servants, seafarers, and domestic workers (they were not included before as well) as they are covered by other regulations.

## Core provisions extended to more employees

Core provisions refer to employee entitlements given to workmen (manual labor workers or blue-collar workers), non-workmen (non-managers and executives, white-collar workers), and managers and executives (M&Es) earning more than S\$4,500 (US\$3,242) per month.

After the amendment, the S\$4,500 threshold was removed, allowing an additional 430,000 M&Es to benefit from employment protection under the EA.

- The core provisions include:
- Timely payment of salaries;
- Paid annual and sick leave;
- Paid public holidays;
- Protection from wrongful dismissal; and
- Maintenance of employment records.

## Salary threshold for non-workmen increased

Before April 1, 2019, non-workmen earning up to S\$2,500 (US\$1,857) were protected by Part IV provisions of the EA (which provides for rest days, hours of work, and other conditions of service), with overtime rate capped at S\$2,250 (US\$1,671).

With the new law in place, non-workmen earning up to S\$2,600 (US\$1,931) are now protected by the Part IV provisions and the overtime rate will be capped at S\$2,600 (US\$1,931).

Managers and executives are not covered under the Part IV provisions.

## New approach to salary deductions

Prior to the new amendments, employers were limited to the type of salary deductions they could take, such as for absence from work or damage or loss of company property and goods. Now employers may make other deductions, such as for company insurance plans, but only if the employee agrees to the deduction in writing and can withdraw their consent any time without incurring sanctions.

This arrangement provides employers with the flexibility to cater to mutually agreed deductions while safeguarding the salary of employees.

## Medical certificates (MCs) and hospitalization leave

MCs issued by doctors and dentists registered under the Medical Registration Act, 1997 and the Dental Registration Act, 1999 is now recognized, whereas previously only MCs issued by the government- and company-appointed doctors were acknowledged. This provides employees with the convenience to visit doctors closer to home.

However, this policy does not impact the reimbursement of medical consultation fees. Employers are only required to reimburse fees from government doctors or company-approved doctors.

### Working on public holidays

Compensation for working on public holidays has now been extended to all employees.

Previously, when workmen and non-workmen were required to work on public holidays, employers either provided compensation with an extra day's pay or a full-day off-in-lieu. The new changes will now allow employers to grant time off for the number of hours worked on a public holiday, rather than the full day.

Part IV employees will continue to receive an extra day's pay or a full day off.

### Wrongful dismissal

The Employment Claims Tribunal (ECT) will now manage wrongful dismissal claims, which were

	<b>Social Insurance</b>			
Capped salary base subject to contribution	<b>US\$ 1,295</b>	Employer contribution	<b>17%</b>	Employee contribution <b>8%</b>
	<b>Health Insurance</b>			
Capped salary base subject to contribution	<b>US\$ 1,295</b>	Employer contribution	<b>3%</b>	Employee contribution <b>1.5%</b>
	<b>Labor Accident &amp; Occupational Disease Insurance</b>			
Capped salary base subject to contribution	<b>US\$ 1,295</b>	Employer contribution	<b>0.5%</b>	

previously adjudicated by the Ministry of Manpower. Furthermore, the ECT will also adjudicate salary-related claims which were resolved by the Tripartite Alliance for Dispute Management (TADM) – the TADM provided mediation services to resolve disputes before they were brought forth to the ECT.

Employees who felt they were forced to resign and can substantiate their claims can submit a dismissal claim. This is described in the EA as:

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- Dismissal due to discrimination based on the employee's age, gender, disability, nationality, race, or religion;
  - Dismissal to depriving an employee of benefits/entitlements — such as maternity benefits and bonus entitlements; and
  - Dismissal to punish an employee for exercising a right — such as whistleblowing.

Additionally, for M&Es to submit a wrongful dismissal claim, they now need to have served a minimum period of six months at their respective companies. Before the reform, M&Es needed to serve one year before making a claim. For non-M&Es, there is no minimum service period required.

Either party could, however, terminate an employment contract by providing written notice or by paying a salary in lieu, to the other party.

## Impact for employers

In light of these changes, employers need to review their HR policies and handbook. The Employment Act reform brings significant changes to the dispute resolution framework, compensation for working on a public holiday, and salary deductions for employees. The core provisions include having a minimum of 7 to 14 days of annual leave, paid public holidays, sick leave, and statutory protection against wrongful dismissal.

Employers will need to be more cautious when terminating employees, particularly for higher paid M&Es. The practice of inviting employees to resign, often for the benefit of the employee to keep an untarnished employment record, now poses risks for the employer as they could result in a claim of constructive dismissal. This could also affect large-scale redundancies and restructuring strategies.

Furthermore, under the new EA, employees have the statutory right to buy out their notice period and thus end their employment. This could mean employers may face the prospect of employees joining competitors earlier as well as having less control over business planning and transitioning.

Being aware of the scope of these changes will be especially important for HR departments, which may need to make internal policy changes to comply with the new rules and regulations.

This could be particularly problematic for companies in fast-moving industries where such mobility provided by the EA could pose business risks and will have to develop strategies to address this issue.

## Employment contracts

The essential clauses of a contract of service in Singapore include:

- Commencement of employment, full name of employer and employee;
- Appointment - job titles, main duties and responsibilities;
- Working arrangements (Hours of work, number of working days per week, rest day);
- Probation period (if any);
- Remuneration (Salary period, basic period, fixed allowances/deduction, overtime rate of pay, bonus and incentives, etc);
- Employee benefits (sick leave, annual leave, maternity leave, etc.), other medical benefits;
- Termination of contract - notice period; and
- Code of conduct.

## Employee leaves and vacations

### Statutory holidays

The President of Singapore can declare any day to be a public holiday, although every major race and religion usually receive two public holidays each.

If a public holiday falls on a Sunday, the following day is usually declared a public holiday, unless the Monday itself is already a public holiday. If a public holiday falls on a Saturday, the government will declare a school holiday the following Monday. Due to the ongoing pandemic, there will be four fewer long weekends in 2021 than in 2020.

Employees who have to work on a public holiday will be entitled to an extra day's salary at the basic rate. Alternatively, employers, with the consent of the employee, can substitute the employee's day off with another working day.

Further, the employer can also grant time-off-in-lieu, based on the number of hours the employee has worked on the public holiday. This option only applies to:

- Workmen earning more than S\$4,500 per month (US\$3,364);
- Non-workmen earning more than S\$2,600 per month (US\$1,943); and
- All managers and executives.

### Annual leave

If an employee is covered by the EA, they are entitled to annual leave after working three months. An employee's annual leave entitlement is dependent on the number of years they have worked at the company.

## Annual Leaves in Singapore

Years of service	Days of leave
1st	7
2nd	8
3rd	9
4th	10
5th	11
6th	12
7th	13
8th and above	14

## Maternity leave

Only Singaporean residents are entitled to paid maternity leave. The length is usually 12 weeks but if the child is a Singaporean citizen then the leave is 16 weeks.

Further, there are other conditions that must be fulfilled to receive maternity leave. These are:

- The mother must be legally married to the father;
- Employment must have begun at least three months before the birth of the child; and
- The first eight weeks of maternity leave are paid by the employer, and the next eight weeks by the government.

## Employment permits

The Ministry of Manpower (MoM) issues a wide range of employment permits to expatriates planning to work in Singapore. Each employment permit differs across various categories of employees and is based on their professional skills and monthly salaries.

It is important for applicants to note that most work permits are applied through the employer or an employment agent via the MoM's online platform. Therefore, it is mandatory for skilled professionals to first obtain a job offer in the country before applying.

## Employment Pass

The Employment Pass (EP) is issued to expatriates employed as foreign managers, executives, and skilled professionals in Singapore. First-time candidates can obtain an EP for an initial two years which can then be renewed for up to three years at a time.

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As of September 2020, the new minimum salary requirement for EP applicants will be S\$4,500 (US\$3,308). For applicants that are renewing their EPs, this salary criteria will come into effect on May 1, 2021. More experienced candidates are required to be offered a higher salary to qualify for this work permit.

Candidates that are offered a monthly salary of SG\$6,000 (US\$4,383) or more, are eligible to apply for a dependent's pass for their legally married spouse and unmarried children under 21 years of age to join them in Singapore.

Applicants looking to bring their parents, common-law spouse, or stepchildren must apply for the Long-Term Visit Pass (LTVP). The requirements are the same as for the dependent's pass, however, only those having a fixed monthly salary of at least S\$12,000 (US\$8,768) can bring their parents into the country.

There is no foreign worker levy or quota for this specific work permit. Moreover, the processing time for EP applications is up to five weeks, and, if submitted online, the application may be processed within three weeks.

### **Salary requirements for financial services sector**

Foreign applicants in the financial services sector must now receive a qualifying salary of S\$5,000 (US\$3,678). Similarly, the qualifying salaries for older and experienced candidates will also be raised. This will come into effect September 1, 2020 for new applicants and from May 1, 2021 for renewals.

### **Documents for EP applications**

Employers need to submit the following documents for EP applications:

- Personal information of the applicant's passport;
- Company's latest business profile or information registered with Singapore's Accounting and Corporate Regulatory Authority (ACRA); and
- Details of the applicant's academic certificates. Applicants from India and China are required to produce additional documents.

Additional documents for Indian and Chinese nationals:

1. Indian applicants – transcripts and marksheets.
2. Chinese applicants – certificate of graduation and verification proof in English from sources recommended by the MoM.

Further, documents in languages other than English must be submitted along with a translated copy of each. Also, it is important to note that the MoM may ask for more documents to be submitted at the time of processing the application.



## Personalized Employment Pass

The Personalized Employment Pass (PEP) is designed for high-earning EP holders and overseas foreign professionals. The minimum salary required to obtain a PEP is S\$12,000 (US\$8,767) per month for existing EP holders and S\$18,000 (US\$13,151) per month for overseas foreign professionals. Candidates can apply for a PEP themselves. The application takes around eight weeks to process.

One key advantage for PEP holders is the flexibility to switch jobs without re-applying for another employment permit. They can also stay in the country for up to six months before securing the next job. Another important advantage is that PEP holders can apply for any job in any sector, including medicine, law, pharmacy, and dentistry.

There is also no foreign worker levy or quota for this type of work permit, and PEP holders can apply for a dependent's pass or an LTVP for their family members. However, the PEP can only be issued once for a period of three years. Thereafter, applicants need to either apply for an EP or S Pass to continue their employment in Singapore.

### *Requirements of the pass*

To keep holding the PEP, the candidate must:

- Not be unemployed in Singapore for more than six months; and
- Earn a fixed salary of at least S\$144,000 (US\$107,299) per calendar year, regardless of how many months the candidate is in employment.

### *Who is not eligible?*

The following categories are not eligible for a PEP:

- An EP holder under a sponsorship scheme;
- Journalists, editors, sub-editors or producers;
- Freelancers; and
- A sole proprietor, partner, or where a directors is also a shareholder in an ACRA-registered company.

## Entrepreneur Pass

The Entrepreneur Pass (EntrePass) is for foreign business professionals and entrepreneurs who wish to start their own business in Singapore.

The initial EntrePass is valid for one year and two years for every subsequent renewal. Business owners must, however, meet the renewal criteria set by the MoM, which includes aspects such as the number of hired local employees as well as the total amount of annual business spending. The full list can be found on the MoM website.

As per the eligibility criteria stated by the MoM, the applicant's company must have either:

- Funding from an accredited source;
- Hold intellectual property (IP) registered with a recognized national IP institution;
- Research collaboration with a recognized institution; or
- Be an incubatee at a Singapore government-supported incubator or accelerator.

According to the MoM, businesses, such as coffee shops, hawker centers, food courts, bars, night clubs, karaoke lounges, massage parlors, and employment agencies, are not eligible under the EntrePass scheme.

The documents required for the EntrePass are:

- Copy of the personal information page of the applicant's passport;
- Past employment testimonials in English; and
- A business plan in English.

For businesses registered with the ACRA:

- Company's latest business profile

## S Pass

The S Pass is similar to EP except that it is designed for mid-level skilled employees with a job offer that includes a minimum monthly salary of S\$2,500 (US\$1,838) or more.

As with the EP, S Passes are valid for up to two years and can be renewed for up to three years at a time. S Pass holders that earn a monthly salary of SG\$6,000 (US\$4,383) or more, are eligible to ask their employer to apply for a dependent's pass on their family's behalf.

The government has also placed a quota on the number of S Pass applicants. As of January 2020, Singaporean businesses are forbidden to have more than 10 percent of their total workforce as S Pass holders. The country will begin reducing the foreign worker quota for the manufacturing sector over the next two years, according to the 2021 budget.



The government will cut the S-Pass quota from the current 20 percent limit to 15 percent in January 2023. Furthermore, the foreign worker levy rates for services, marine shipyard, and construction were reduced to 18 percent, starting January 1, 2021, and will be cut to 15 percent in January 2023.

## Documents for S Pass applications

- Personal information of the applicant's passport;
- Company's latest business profile or information registered with Singapore's Accounting and Corporate Regulatory Authority (ACRA); and
- Details of the applicant's academic certificates. Applicants from India and China are required to produce additional documents.

Additional documents for Indian and Chinese nationals:

- » Indian applicants – transcripts and marksheets.
- » Chinese applicants – certificate of graduation and verification proof in English from sources recommended by the MoM.

## Tech.Pass

Singapore issued a new work permit named Tech.Pass, aimed at attracting highly accomplished technology entrepreneurs, experts, and business leaders from January 2021.

The Tech.Pass program is an extension of the Tech@SG program, which assists fast-growing companies access critical talent to scale their business in Singapore and the region.

Unlike the Employment Pass, the Tech.Pass scheme does not require the sponsorship of a local employer, giving the professional greater flexibility in their activities, such as being an employer, investor, starting a business, or becoming a director or consulting in one or more Singapore-based tech companies. This work permit also allows holders to switch between employers.

The program was open to 500 applicants upon launch, on a first-come, first-serve basis. The work permit will be for a two-year period that can be extended if the applicant passes the renewal criteria.

The government hopes the Tech.Pass scheme will create a 'flywheel effect' to further strengthen its position as a tech hub in the region. According to Singapore's Economic Development Board, the city-state is already home to 59 percent of the Asian regional headquarters of multinational tech firms, such as Visa, Google, and Facebook.

## Who is eligible to apply?

The government has imposed strict eligibility criteria for Tech.Pass applicants. They must satisfy at least two of the following conditions:

- Their last fixed monthly salary of at least S\$20,000 (US\$14,902), or its equivalent in foreign currency;
- Having at least five years of experience in a leading role in a tech company that has a market valuation of at least US\$500 million or have raised at least US\$30 million in funding; or
- Having at least five years of experience in a leading role in the development of a tech product that has at least 100,000 monthly active users or at least garnered US\$100 million in annual revenue.

## What are the criteria for the renewal for Tech.Pass?

There are several requirements for applicants to receive a two-year renewal. The applicant must:

- Have earned at least S\$240,000 (US\$178,826) of income based on an assessment by the Inland Revenue of Singapore; or
- Demonstrate business spending of at least S\$100,000 (US\$74,510) and employ one local employee who is classified as a professional, manager, or executive (PME) as well as three 'local qualifying salary' (LQS) employees.

PMEs must earn a fixed monthly salary of at least S\$3,900 (US\$2,905) with LQS referring to locals who earn a monthly salary of at least S\$1,400 (US\$1,043).

In addition to one of the aforementioned criteria, applicants must be performing at least two of the following roles, one of which must be from column A.

Additional Criteria for Tech. Pass Renewal	
A	B
Founded a company in Singapore that sells tech-based product or service.	Serve in the Board of Directors of a Singapore-based company (does not need to be a tech company).
Serve a leading role in a tech company in Singapore.	Acted as a mentor to a Singapore-based start-up.
Serve a leading role in two or more Singapore-based companies.	Acted as a lecturer/adjunct professor in a Singapore institute of higher learning.
Employed in a technical role in a Singapore-based company (leading a team).	Provided training not covered under B2 or B3.
Employed in a leading technical role in two or more Singapore-based companies.	Invested in a Singapore-based tech company.

## Work permits

Semi-skilled foreign workers applying for jobs in construction, manufacturing, or the services sector in Singapore are required to apply for a Work Permit (WP).

There are three kinds of WPs issued by the government, depending on the sector of the applicant's job. These are WP for foreign domestic workers; WP for confinement nannies; and WP for performing artists.

Only workers from approved countries are eligible for work permits provided the employer pays a levy and the security bond, meet the quota criterion, and provide the worker with healthcare insurance.

The WP is usually valid for up to two years and is subject to the foreign workers' contract with the associated employer. Additionally, employees entering Singapore on a WP visa are not permitted to apply for a dependent's pass for their family members.

WPs can only be applied by the employer on the worker's behalf. The processing time for a WP is one to seven working days.

Other short duration employment visas available are:

- Training Employment Pass (TEP) – a TEP is issued to foreigners engaged in practical training for jobs of a professional, managerial, executive, or specialist nature in Singapore. The candidates must earn at least S\$3,000 (US\$2,191) a month. The TEP is valid for a maximum period of three months and is not renewable; and
- Training Work Permit (TWP) – a TWP is issued to unskilled or semi-skilled foreign trainees or students on practical training in Singapore for up to six months. The number of TWP holders a local company can hire is capped based on the sector the business operates in.

## Fair Consideration Framework

The Fair Consideration Framework (FCF) requires all employers in Singapore to promote fair employment practices and improve labor market transparency. Under the FCF, employers must first advertise job positions on the MyCareersFuture.sg to make them known to local job seekers. The jobs advertised on this portal were previously mainly for executive and manager level positions.

As of May 2020, job positions with a monthly salary of up to S\$20,000 (US\$14,902) are now advertised on the site; previously, job positions with a monthly salary of S\$15,000 (US\$11,000) and above were not required to do so. Certain senior positions remain exempted, taking into account that these can be market sensitive. To provide greater awareness for mid-skilled jobs,

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the government has extended the job advertisement requirements to S Pass applications from October 1, 2020. Further, the job advertising duration for both EP and S Pass applications will be doubled from 14 to 28 days.

## Tech@SG

In January 2020, Singapore's government launched the Tech@SG program, which aims to help Singapore-based technology companies recruit highly skilled foreign talent and expand in the region.

The government agencies Economic Development Board (EDB) and Enterprise Singapore (ES) jointly administer the program. The EDB executes strategies that enhance Singapore's standing as a hub for investment and business while the ESG supports the development of the country's small and medium enterprises.

Companies that qualify for this program are eligible to receive up to 10 new Employment Passes (EPs) to hire foreign nationals and is valid for up to two years. Further, Tech@SG will support the renewal of the EP and extend them for up to three years. Thereafter, the EP must be renewed through the process implemented by the Ministry of Manpower (MOM).

### What are the eligibility criteria for companies?

Companies that qualify for Tech@SG must meet the following criteria:

- Must be a company incorporated in Singapore with the Accounting and Corporate Regulatory Authority (ACRA);
- Must be a company that has a digital or technology offering as part of its core business product or service;
  - » This includes providing hardware or software technologies, e-commerce activities, digital gaming, digital media, cybersecurity, data science, and fintech, among many others;
- Secure more than US\$10 million (in cumulative) investment funding in the past 36 months; and
- Receive funding from one of the Tech@SG investment firms in the past 36 months.

### List of investment firms

The Tech@SG programs recognizes three types of investment firms:

- Well-established venture capital firms with an international presence;
- Boutique venture capital firms with a track record of investing in growth-companies in Asia; and
- Investment firms with links to the Singaporean government.

The recognized firms are mentioned in the table below.

### Tech@SG Recognized Investment Firms

Accel Partners	August One	GP Bullhound
Golden Gate Ventures	Openspace Ventures	Pavilion Capital
CBC Group	Rakuten Ventures	B Capital Group
Green Meadows Accelerator	Sequoia Capital India	Heritas Capital Management
Decacorn Capital	Dymon Asia Ventures	CyberAgent Ventures
East Ventures	EDBI	EV Growth
GGV Capital China	New Enterprise Associates	MTA
Gobi Partners	ZIG Ventures	Wavemaker
Monk's Hill Ventures	LocalGlobe and Latitude	Vickers Venture Partners
Vertex Ventures	Jungle Ventures	Lightstone Ventures
TNB Aura	STRIVE	Insignia Ventures Partners
Softbank Investment Advisors	Iconiq Capital	

## What are the criteria for individual EP applicants?

Once a business has qualified for the Tech@SG program, it must ensure the foreign worker adheres to the following requirements before the EP is secured:

### *Organizational role*

- The applicant is considered a 'core team member' in the business whose responsibilities fall under these categories;
- The applicant must be manager-level employee and above in the company; and
- The applicant's fixed monthly salary must be S\$3,600 (US\$2,590) or above.

### *Functional role*

- Core business functions, such as finance, human resources, general management, business development, business strategy; or
- Technical functions, such as software engineering, product development, data science.

### *What is the application process?*

Prior to applying for the Tech@SG program, companies must ensure that they are incorporated with ACRA and have obtained a CorpPass account from ACRA.

Once the applicant is issued a CorpPass account, they will need to login and select and assign 'EDB Form SG' as the e-service the applicant will use.

### *Applying for Tech@SG endorsement*

There are two methods of applying for Tech@SG depending on the ownership of the applicant company.

If the company has less than 30 percent local shareholding, it should submit its application to the EDB. For companies with at least 30 percent or more local shareholding, the submission should be done through Startup SG, as an entity under ES.

Companies are usually told the outcome of their application within 10-15 working days.

### *Applying for EPs*

Once a company has been endorsed under the Tech@SG program, it can submit the EP applications to the MOM.

The company must register for an Employment Pass Online (EPOL) account with the MOM. The MOM may take up to five working days to process the registration request and will advise its decision to the company within 21 working days.

Business owners should note that the EP applications must be submitted within two years of being accepted into the Tech@SG program.

## **Singapore's foreign worker quota – cuts announced**

The move is part of the government's efforts to moderate Singapore's reliance on foreign labor, particularly as the unemployment rate soared to 4.1 percent in 2020 – although this could have reached 6.1 percent if not for the fiscal and monetary policies issued throughout that year.

Businesses will not be required to dismiss their excess foreign workers immediately when the new quotas take effect but can retain them until their individual S-Passes expire. This will ensure firms have the time to meet their new manpower quotas.

## **Global Investor Program**

The government made changes to its Global Investor Program (GIP) in 2020 to make it easier for foreign investors and entrepreneurs to attain permanent residence (PR).

The GIP was introduced in 2004 and is administered by Contact Singapore, a government agency whose function is to attract investors from all over the world to invest, work, and live in Singapore. Through this program, foreigners who invest at least S\$2.5 million (US\$1.86 million) can apply for PR.



Under the new changes, the government has set new criteria for GIP applicants. Next generation business owners, founders of fast-growing companies, and ultra-high net worth individuals who want to set up a family office in Singapore, can now qualify for PR status. Currently, only established entrepreneurs are eligible to apply for PR under GIP.

After applicants have passed these criteria, they must choose the form of their investment in Singapore. These are investing in a new or existing business entity in the country, investing in a GIP-approved fund, or invest in a new or existing Singapore-based, single-family office.

Through these latest updates, the country is hoping to attract high-value companies that could provide job opportunities that reflect the changing needs of Singapore's employment landscape, with professionals, managers, executives, and technicians set to make up two-thirds of the workforce by 2030.

Investors should seek the help of registered local advisors to better understand how they can benefit from these recent developments.

## What is the GIP application process?

To gain GIP approval and ultimately gain PR status, foreign investors need to adhere to the following steps:

1. Submit the online and hardcopy GIP forms to the Economic Development Board (EDB), a statutory board that plans strategies to maintain Singapore as a global hub for business and investment.
2. The EDB will interview the applicant.
3. If the applicant meets the criteria, the Immigration and Checkpoints Authority (ICA) will issue an Approval-in-Principal (AIP) status, which is valid for six months.
4. The applicant will then need to invest under their selected investment option within six months from the issued AIP status.
5. The applicant will need to provide evidence (bank statements, legal documents) to the EDB as proof the investment has been realized.
6. The EDB will verify the evidence upon which the ICA will issue a final approval letter.
7. The applicant can then formalize their PR status in Singapore. This must be completed within 12 months from the issuance of the final approval letter.

## How can you qualify?

Investors can apply for GIP if they fall under the following threshold criteria:

***Established business owners***



An applicant's current business will need to have an annual turnover of S\$200 million (US\$149 million), an increase from S\$50 million (US\$37.2 million) previously. Business owners must have at least three years of a proven entrepreneurial or business track record and own a minimum of 30 percent of the company.

Additionally, the business should be engaged in one of the eligible industries listed below.

## Next generation business owners

The applicant's business should have an annual turnover of S\$500 million (US\$372.5 million), and the applicant's immediate family member must own 30 percent of the company. The company itself should be engaged in one of the businesses laid out for established business owners.

## Founders of fast growth companies

In this new criterion, the applicant must be the founder and largest individual shareholder of a company. The company must have a valuation of at least S\$500 million (US\$372.5 million) and must be invested into by a reputable venture capital or private equity firms.

## Family office principals

This criterion aims to attract individuals with net investible assets of at least S\$200 million (US\$149 million), who are looking to establish a family office in the country.

Net investible assets include bank deposits, financial assets, capital market products, and other collective investment schemes. Moreover, the individual must possess at least five years of entrepreneurial, management, or investment record.

## What are the eligible industries?

Established business owners, next generation business owners, and founder of fast growth companies, must have a business in one of the following industries in order to qualify for the GIP:

- Aerospace engineering;
- Alternative energy/ clean technology;
- Electronics;
- Energy;
- Consumer Business (for example, flavors and fragrances, food ingredients, nutrition, home and personal care);
- Automotive;
- Chemicals;
- Engineering Services;

- 
- Nanotechnology;
  - Information and communication products and services;
  - Logistics and supply chain management;
  - Medical technology;
  - Media and entertainment;
  - Marine and offshore engineering;
  - Healthcare;
  - Natural resources (for example, metals, mining);
  - Pharmaceuticals and biotechnology;
  - Shipping;
  - Space;
  - Safety and security;
  - Precision engineering;
  - Professional services;
  - Arts businesses;
    - » Visual arts businesses; and
    - » Performing arts businesses
  - Sports businesses; and
  - Family office and financial services.

## What are the investment options?

Once an applicant has met one of the four threshold criteria, they can choose from three investment options in Singapore.

### Option A

Applicants who choose option A must invest S\$2.5 million (US\$1.86 million) in a new or existing business in Singapore.

The applicant must submit a five-year business or investment plan, which highlights future expenditures and revenues. The business plan will be assessed on its feasibility, overall activities, capacity to create local jobs, as well as the applicant's role in growing the company.

### Option B

Through option B, the applicant must invest S\$2.5 million (US\$1.86 million) in a GIP-approved fund that invests in Singapore-based companies. The list of the approved funds can be found on the GIP website.

Applicants will be assessed on their business or investment activities, capacity to create local jobs, and any future investment plans.

## Option C

As part of the changes to the GIP, the government has added option C in which applicants must invest S\$2.5 million (US\$1.86 million) in a new or existing Singapore-based single-family office.

Applicants will need to submit a five-year business or investment plan, which must contain employment and financial projections. The business or investment plan will be assessed on the applicant's role in the family office and proposed investment sectors.

## Social insurance

The Central Provident Fund (CPF) is a social security savings scheme, which is funded from the contributions of employers and employees. This mandatory program is an important pillar of Singapore's social security system and aims to meet the retirement, housing, and healthcare needs of its people.

Individual CPF funds are further subcategorized into three savings accounts: Ordinary Account, Special Account, and Medisave Account.

The Ordinary Account can be used at any time to purchase a home, make investments, and provide for education, the Special Account cannot be utilized until the account holder reaches retirement, unless the money is used to purchase retirement-related financial products. This account will serve as the income a retired person receives.

The Medisave Account is used to pay for medical expenses, hospitalization expenses and pay for approved medical insurance. Required employer contributions range from 7.5 percent to 16 percent depending on the age and wage of the employee. Required employee contributions range from five percent to 20 percent.

## Amendments to the Central Provident Fund Act

On November 2, 2021, Singapore's Parliament passed the amended Central Provident Fund (CPF) Act and the Retirement and Re-Employment Act. The CPF is the obligatory savings and pension plan for Singaporeans and permanent residents that fund their retirement, healthcare, and housing needs in Singapore.

Under these amendments, the government aims to streamline the CPF rules to offer greater flexibility for transfers and quicker disbursements and topping up of CPF accounts. Further, the retirement and re-employment ages will be raised to 63 and 68, respectively. Since 2017, Singapore employers are obligated to offer re-employment options for employees who reach the retirement age.

## What are the amendments to the CPF Act?

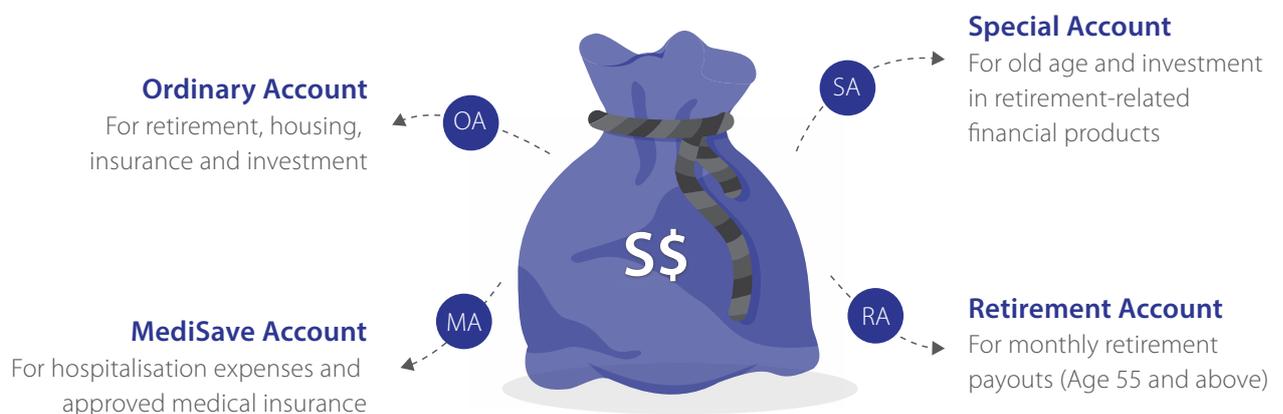
### Easier for CPF members to receive their retirement payouts

Retirement Sum Scheme (RSS) members who have depleted the funds in their Retirement Account (RA) will automatically have payouts from their Ordinary Accounts (OA) and Special Accounts (SA). This is to ensure there are no disruptions to payouts with the government aiming to implement this new rule in the first quarter of 2022.

Previously, RSS members who depleted their RA savings could only continue receiving payouts if they applied to transfer money in their OA or SA to their RA.

The RSS is one of two retirement schemes under the CPF Board, the other being CPF LIFE. The RSS provides CPF members with monthly payouts during retirement until the savings in their RA runs out, or they turn 90. CPF LIFE was introduced in 2009 and offers monthly payouts for life.

### Composition of Singapore's Retirement Sum Scheme



Source: [spf.gov.sg](http://spf.gov.sg)

## Simplifying tax relief rules

Under the Retirement Sum Topping-Up (RSTU) scheme, a CPF member can top up their SA (if they are below the age of 55) or RA (if they are 55 or above) via CPF transfer or cash. The CPF member can also top the SA or RA savings of their family members. There is also a S\$7,000 (US\$5,153) per year tax relief if a CPF member is topping up for themselves and an additional S\$7,000 (US\$5,153) per year if they are top-up for parents, in-laws, grandparents, grandparents-in-law, spouse, and siblings.

Effective from January 1, 2022, the tax relief cap for voluntary top-ups will increase to S\$8,000 (US\$5,890) per year. In addition, the government has introduced a tax relief cap of S\$8,000 (US\$5,890) per year to CPF members who top up a MediSave account (the account used for healthcare needs).

## The quicker disbursement of CPF funds upon the death of a member

From April 2022, the duration in which the CPF funds are retained after death has been shortened to six months compared to the previous length of seven years. This timeframe gives beneficiaries enough time to claim nominated monies from the CPF Board.

Suppose a CPF member did not designate a CPF nomination. In that case, relatives can appoint a 'beneficiary representative' who can submit a consolidated claim for the funds at a maximum amount of S\$10,000 (US\$7,365). If there are disputes among the beneficiaries after the funds have been disbursed, the beneficiaries can seek recourse under the law.

## Increase of retirement and re-employment ages

From July 2022, the retirement and re-employment ages will increase to 63 and 68, respectively, and 65 and 70 by 2030. Singapore's Manpower Minister Tan See Leng told Parliament that the increase in the retirement and re-employment ages was necessary – particularly as by 2030, one in four Singaporeans will be 65 and older, resulting in talent shortages and hurting the country's productivity and competitiveness. Businesses can raise their retirement and re-employment ages ahead of the scheduled timeline. In early 2021, the government announced that the CPF contribution rates for employees aged 55 to 70 years will increase earning more than S\$750 (US\$552) per month, starting from January 1, 2022.

The new rates are as follows:

## CPF Contributions for 2022

Employee's age	Current CPF contribution rates			CPF contribution rates from January 1, 2022		
	By employer (% wages)	By employee (% wages)	Total (% wages)	By employer (% wages)	By employee (% wages)	Total (% wages)
55 and below	17	20	37	17	20	37
Above 55 to 60	13	13	26	14	14	28
Above 60 to 65	9	7.5	16.5	10	8.5	18.5
Above 65 to 70	7.5	5	12.5	8	6	14
Above 70	7.5	5	12.5	7.5	5	12.5

## Thailand

### Labor law

Employees are protected by various law provisions, which include:

- Labor Protection Act 1998;
- Civil and Commercial Code;
- Labor Relations Act 1975;
- Social Security Act 1990;
- Skill Development Promotion Act 2002;
- Act on Establishment of the Labor Court and Labor Dispute Procedure 1979;
- Emergency Decree on Managing the Work of Aliens 2017;
- Provident Fund Act 1987;
- Occupational Safety, Health and Environment Act 2011; and
- Workmen Compensation Act 1994.

### Relevant visa categories

Foreigners who want to work or do business in Thailand will need to apply for a non-immigrant visa. These are generally B and IB visas. The visa fees set at 2,000 baht (US\$64), which is a single-entry visa and is valid for three months.

#### Application process for visa category B (business visas)

Foreigners who wish to work in Thailand must provide the following documents:

- 
- Completed visa application form;
  - Valid passport and travel documents;
  - Evidence of adequate financing (20,000 baht per person (US\$641) or 40,000 baht (US\$1,281) per family);
  - Letter of approval from the Ministry of Labor (to obtain this, the employer in Thailand needs to submit a WP3 Form to the Office of Foreign Workers Administration, Department of Employment at the Ministry of Labor; and
  - Copy of the work permit issued by the Ministry of Labor.

## IB visas (investment and business visa)

This visa type is issued to foreign investors who are involved in projects endorsed by the Thailand Board of Investment (BOI). These projects must bring benefits to Thailand in the following ways:

- Increase local employment;
- Utilize raw materials;
- Export-orientated; and
- Encourage knowledge transfer to Thai nationals.

Foreigners who wish to conduct business in Thailand must provide the following documents:

- Valid passport and travel documents;
- Evidence of adequate financing (20,000 baht per person (US\$641) or 40,000 baht (US\$1,281) per family);
- Letter from the applicant's company stating the applicant's length of employment, salary, position;
- Corporate documents associated with the company; and
- Evidence of tax registration and payment.

## Thailand's new incentives to attract foreign investors, professionals, and retirees

Foreign investors, professionals, and retirees will be able to enjoy a number of new incentives in Thailand, as the government seeks to attract high-earning overseas residents to help the country's COVID-19 recovery.

Thailand's cabinet passed a resolution on September 14, 2021, introducing immigration, tax, and land ownership incentives aimed at foreign investors and skilled professionals. The incentives are part of an effort to stimulate Thailand's economy which has been badly impacted by the COVID-19 pandemic.

The incentives come in three categories: immigration, tax, and real estate.



## Immigration

Qualified applicants can receive a 10-year long-term resident visa to live in Thailand, including for their spouses and children. Qualified applicants will also be issued an automatic work permit. This is a new type of visa that did not previously exist in Thailand.

As opposed to other types of visas, those on long-term resident visas will not have to submit written notices to relevant authorities to stay longer than 90 days in the country. Potentially, they will not be subject to restrictions on hiring foreign workers, such as the requirement that employers hire four Thai workers for every foreign one, although this remains to be determined.

## Tax

Qualified applicants will be able to enjoy the same income tax rates as Thai citizens, as well as tax exemptions for income earned abroad. Further, they can apply for a 17 percent fixed income tax rate in accordance with the Eastern Economic Corridor scheme.

## Land and property

Qualified applicants will be able to enjoy relaxed restrictions on foreign ownership and rent of land and property.

The incentives will be overseen by Thailand's Office of National Economic and Social Development Council. They will be in place for five fiscal years from 2022-2026, at which point authorities will evaluate their performance and decide whether to extend them. Potential applicants should note that while the Thai government has confirmed incentives in these areas, details in some areas, such as land and property, have not yet been made clear.

## Who qualifies for the incentives?

The incentives apply to four categories of foreigners: wealthy global citizens, wealthy pensioners, work from Thailand professionals, and highly skilled professionals.

### Wealthy global citizens

People with at least US\$80,000 in income over the last two years and at least US\$1 million in assets can qualify for the incentives. Further, they must have medical insurance covering at least US\$100,000 and invest at least US\$500,000 in Thai government bonds or real estate.

### Wealthy pensioners

Retired pensioners with a stable pension of at least US\$40,000 per year and aged 50 or older

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can apply. They too must have medical insurance covering at least US\$100,000 and invest at least US\$250,000 in Thai government bonds or real estate.

## Work from Thailand professionals

Foreign professionals who work remotely from Thailand (often referred to as digital nomads), with at least US\$80,000 in income over the last two years and at least five years of work experience will be eligible.

## Highly skilled professionals

This category refers to professionals with at least US\$80,000 in income over the last two years or US\$40,000 per year who work in targeted industries, including building infrastructure, logistical systems, and digital systems, or experts and researchers who work with state agencies or as university lecturers.

## Social insurance

The employee must pay five percent of the first 15,000 baht (US\$481) earned per month towards the social security contribution. The employer also contributes five percent.

The contribution to the social security fund is divided into :

- Disability, maternity, and death benefits;
- Child and old age benefits; and
- Unemployment benefits.

## Vietnam

### Labor law

Foreign companies wanting to do business in Vietnam must ensure they follow the provisions of the Labor Code, which contains the legal framework for the rights and obligations of employers and employees with respect to working hours, labor agreements, social insurance, overtime, strikes, and termination of employment contracts, to name a few.

### Relevant visa categories

In order to enter Vietnam, a foreigner needs a visa issued by the Vietnamese Embassy or Consulate. A Vietnamese visa can be granted while in a third-party country or from within

Vietnam. Citizens of ASEAN countries receive a free entry visa to Vietnam that lasts between 15 and 30 days, while Vietnam also an e-visa policy for 80 nationalities lasting until 30 days.

However, to work in Vietnam and remain for an extended period, foreigners need to apply for a longer-term three-month single or multiple entry visa.

Relevant visa types are stated in the table below.

Vietnam Visa Types		
Visa type	Description	Validity
DL	Tourist visa	3 months
HN	Meetings/Conferences	3 months
LD	Foreign workers/Working visas	2 years
LV1-LV2	Working with Vietnamese authorities	12 months
DT	Investor Visas	5 years
DN	Working with Vietnam businesses	12 months
NN1-NN2	Chief Representative Office in Vietnam, Head of Project Office of foreign NGO	12 months
NN3	NGO Staff, Representative Office	12 months
DH	Student/Internship	12 months
NG1-NG4	Diplomatic visas	12 months

## Requirements

A work permit is required when working in Vietnam for more than three months. This should ideally be applied 15 days by the employer with the provincial Ministry of Labor, Invalids and Social Affairs (MoLISA) before the foreign worker commences their employment. Work permit processing times take up to 10 business days.

Where a work permit is not compulsory, a notice must be submitted seven days in advance to the provincial MoLISA prior to working in Vietnam. Currently, work permits for foreigners are valid for a maximum of three years and are not renewable. A new application must be made if the company wishes to continue employing the foreign worker.

To be eligible for a work permit, the applicant must comply with the following conditions:

- 
- Be at least 18 years of age;
  - Be in good enough health to satisfy the job requirements;
  - Be a manager, executive director, or expert with technical skills and knowledge necessary for the job;
  - Have a bachelor's degree or higher and having at least three years of experience working in the relevant field to the job position that the foreign employee has been hired for;
  - Have at least five years of experience with a practice certificate relevant to the job that the foreign employee has been hired for; and
  - Be not currently subject to criminal prosecution or any criminal sentence in Vietnam or overseas or have a criminal record.

Note that in September 2021, the Vietnamese government issued a resolution that eased regulations for issuing, extending, and certification of documents for work permits of foreigners in Vietnam. The changes include:

- The applicant's degree or training field no longer needs to be directly related to the job position or role; and
- Applicants that are experts and technicians can use previously issued work permits in lieu of providing proof of work experience in their home country.

Foreign workers with valid work permits can be sent to another province or city for not more than six months without having to reapply for a work permit.

A work permit may be terminated in the following circumstances:

- Expiration of work permit;
- Termination of labor contract;
- The content of the labor contract is not consistent with the work permit granted;
- If the foreign employee is fired by the foreign employer;
- Withdrawal of work permit by authorized state agencies;
- Termination of operation of the company, organization, and partners in Vietnam; and
- The foreigner is sentenced to prison, dies or is proclaimed missing by court.

The following situations exempt the foreigner from needing a work permit:

- Working in Vietnam for less than three months;
- A member of a limited liability company with two or more members;
- The owner of a limited liability company with only one member;
- A member of the board of a joint stock company;
- Coming to Vietnam to market products and services;
- Coming to Vietnam for less than three months in order to resolve an emergency or technologically complex situation that could affect production, which Vietnamese experts or foreign experts currently in Vietnam are unable to resolve;

- Lawyers granted a professional permit in Vietnam;
- Heads of representative offices, chiefs of project offices or someone working for foreign non-government organization in Vietnam;
- Internally transferred within an enterprise, which has a commercial presence in the committed service list of Vietnam with the World Trade Organization, including: business service, information service, construction services, distribution service, education service, environment service, financial service, health service, tourism service, cultural and recreational services and transportation service; and
- Coming to Vietnam to supply consulting services on tasks serving to research, build, appraise, monitor and evaluate, manage and process programs and projects that use Official Development Assistance (ODA) in accordance with regulations or agreements in an international treaty on ODA signed between an authorized Vietnam agency and foreign agency.

Vietnamese authorities are becoming stricter regarding work permits. Those who violate the regulations by working in Vietnam without a work permit may be penalized or, if unable to meet work permit requirements, deported back to their home countries within 15 days. In addition, the employer's operations may be suspended for three months with a possible penalty of up to US\$3,300.

## Temporary residence cards

Foreigners who hold work permits valid for one year or more, as well as senior management, can be granted a Temporary Residence Card (TRC). A TRC is issued by the immigration agency under the Ministry of Public Security and is valid from one to five years depending on the visa type. People granted a TRC can enter and exit Vietnam without a visa within the valid terms of their TRC. The processing time typically takes five working days while the fee varies between US\$60 to US\$100, depending on the duration of the card.

Holders of work visas are eligible for a Temporary Residence Card, as well as members of management boards, members of councils and boards of directors, heads of company branches and Chief Representatives of representative offices of foreign enterprises in Vietnam.

## Permanent Residence Cards

An expatriate who has a legal residence while earning a living in Vietnam may also apply for a Permanent Residence Card (PRC); however, they are subject to the following conditions:

- The expat works for the development of Vietnam and is awarded a medal or title by the government;
- The expat resides temporarily in Vietnam for three or more consecutive years and is sponsored by his parent, spouse or child who is a Vietnamese citizen and has a permanent residence in Vietnam; and
- Foreign scientists or experts recommended by the head of a ministerial or government agency.

The processing time typically takes five working days with a fee of US\$100. A PRC holder can stay in Vietnam without a visa however, a PRC must be re-issued every 10 years.

## Social insurance

There are three types of mandatory social security in Vietnam that must be covered by foreign enterprises seeking to hire local staff:

- Social insurance;
- Health insurance; and
- Unemployment insurance.

As of December 1, 2018, Social insurance was made compulsory only for foreign staff as well, in accordance with Vietnam's Labor Code. Employers register and pay insurance contributions monthly on behalf of their employees at the provincial Department of Labor, Invalids and Social Affairs (DoLISA).

Social Insurance					
Capped salary base subject to contribution	US\$1,290	Employer contribution	17.5%	Employee contribution	8%
Health Insurance					
Capped salary base subject to contribution	US\$1,290	Employer contribution	3%	Employee contribution	1.5%
Labor Accident & Occupational Disease Insurance					
Capped salary base subject to contribution	US\$1,290	Employer contribution	0.5%	Employee contribution	1.5%

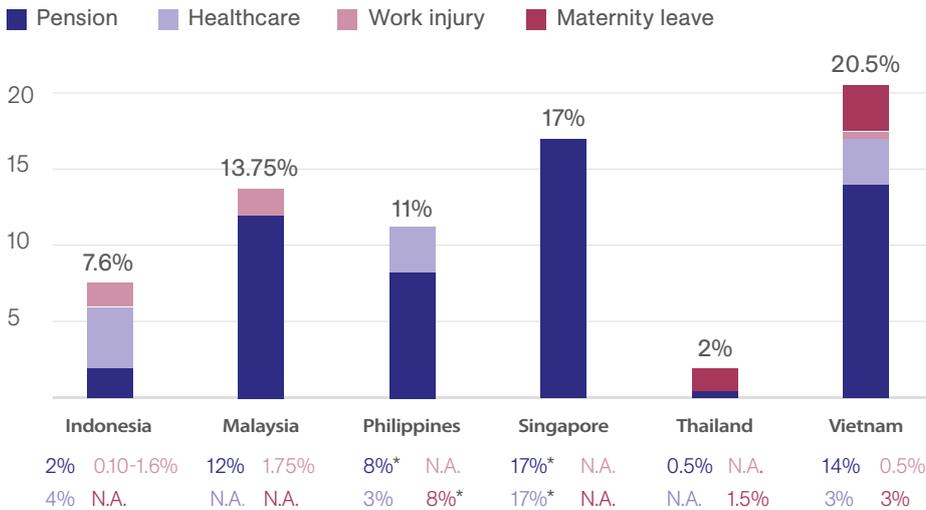
Note that the above rates are the standard contribution rates for employers and employees imposed since 2020. However, to alleviate pressure on companies stemming from the Covid-19 pandemic, on July 1, 2021, the government issued a decree to reduce the social insurance contribution obligations for employers by 0.5 percent for the period between July 1, 2021, and June 30, 2022. This means that during this period, the contribution rate for employers to social insurance has been temporarily reduced to 17 percent and for labor accident and occupational disease insurance is reduced to 0 percent.

Contributions are determined based on employees' monthly salary or wage. While payable amounts will differ depending on the compensation of an employee, it should be noted that

a wage ceiling for calculation of contributions is imposed at 20 times the common minimum wage for social and health insurance (currently VND 29,800,000 (US\$1,290)) and 20 times the regional minimum wage for unemployment insurance (VND 88,400,000 (US\$3,827) depending on the region).

Since January 1, 2021, the regulations for monthly salary for mandatory social insurance is based on the salary by the respective job or title. This will depend on salary as per the employer in the labor contract. For employees who receive wages based on products or a package salary, the salary will be calculated by time to determine the product unit price or package salary. This also includes any additional amounts specified in the labor contract and paid regularly during each pay period.

**Social Insurance Contributions for Employers in ASEAN (% of monthly wages)**



\*This number is inclusive of the contribution categories, and do not refer to separate rates of contribution.  
 Source: aseanbriefing.com, vietnam-briefing.com

# Minimum wages in ASEAN



## Brunei

Brunei's Labor Department does not prescribe a minimum wage. Pay rates are agreed upon directly with the employer.



## Cambodia

In Cambodia, the minimum wage is mainly guaranteed for workers in the country's textiles and footwear manufacturing industry. The monthly rate has increased to US\$190 for 2020 from US\$182 in 2019.

Though a significant hike, the wage increase in Cambodia does not impact the competitive advantage of its garment manufacturing industries as the government continues to delay taxing profits in the sector and eliminating export management fees.

On September 28, 2021, Cambodia's Ministry of Labor and Vocational Training (MLVT) issued Prakas 264 which sets the new minimum wage for the garment, textile, and footwear industries for 2022.

Under Prakas 264, workers in the garment, textile, and footwear industries will be afforded the following minimum wages:

- Regular workers – US\$194 per month (an increase from US\$192 in 2021); and
- Probationary workers – US\$ 192 per month (an increase from US\$187 in 2021).

Prakas 264 also sets out the minimum wage for piece-rate workers who are paid by the number of textile/garment/footwear pieces they produce. For such workers, the pay rate is determined by their level of production and if this results in the worker earning more than the minimum rate, then that worker will be entitled to that higher amount. However, if their production brings in a pay rate lower than the minimum wage, the employer must adjust the worker's pay to equal to the minimum wage.

In addition to a minimum wage, workers in the garment, textile, and footwear industries are also entitled to:

- Attendance bonus – US\$10 per month;
- Transportation or accommodation compensation – US\$7 per month;
- Food allowance – US\$0.50 per day (or one free meal per day);
- Overtime and seniority bonus – US\$2-US\$11 per month for those between their second to the eleventh year of work


## Indonesia

Indonesia's government, through Government Regulation No. 36 of 2021 (GR 36/2021), has eliminated the sectoral minimum wage while establishing a provision for hourly pay for part-time workers.

Calculations for the monthly minimum wage are carried out by the provincial or district wage council.

The local government will determine the minimum wage based on economic and employment conditions. These comprise of the following variables:

- Purchasing power parity;
- Manpower absorption levels; and
- Median wage variables (the margin between the 50 percent of the highest wages and 50 percent from the lowest 50 percent of the lowest wages from employees in the same position).

These variables are assessed based on existing data from the last three years. In addition, the wage council will also take into account economic growth or provision rate inflation, as well as the per capita consumption of working household members.

### *Who does the minimum wage apply to?*

The minimum wage applies to all workers with less than one year of working in the company. After one year, the employee is eligible to be paid in accordance with the scale of wages in the particular company, if they wish to do so. Moreover, businesses are no longer permitted to postpone the payment of the minimum wage for their employees like before, unless they are classified as micro or small businesses.

### *Hourly wages for part-time workers*

GR 36/2021 stipulates that part-time workers are now eligible for hourly wages — a first for Indonesia. Hourly wages are reserved for part-time workers only.

The formula for determining the hourly wage is as follows:

**Hourly wage = Monthly wage/126**

To calculate the daily wage:

Six working days/week

Daily wage = Monthly wage/25

Five working days/week

Daily wage = Monthly wage/21

The employer and employee are allowed to set their agreement, but the final salary should not be lower than the calculation using the aforementioned formulas. The agreed-upon wage structure must also be reported to the Ministry of Manpower.

The wage must be paid in Rupiah or the Rupiah equivalent of a foreign currency. Any non-cash portion in payment may not exceed 25 percent of total wages.

#### *Minimum wages for micro and small businesses*

Micro and small enterprises are exempted from paying the provincial, regional, or city-level minimum wage. However, their workers should be paid at least 50 percent of the average public consumption or 25 percent above the poverty line at the provincial level.

## Sanctions

Employers who fail to pay their employees within the specified deadline can face a fine of five percent of the employees' wage, every day, starting from the fourth day after the deadline. If the wage is unpaid after the eighth day, the employer will be imposed an additional one percent of the employees' wage, per day.

Further, if an employer does not prepare a wage structure and wage scale for the employee, they can face the following sanctions:

- Written warning letters;
- Restriction on business activities;
- Temporary suspension of business; and/or
- Revocation of business license.

Indonesia Minimum Wage 2022	
Province	Monthly minimum wage rate (rupiah)
Aceh	3,166,460 (US\$220)
North Sumatra	2,552,609 (US\$177)
West Sumatra	2,512,539 (US\$175)
Riau	2,938,564 (US\$204)
Riau Islands	3,144,466 (US\$219)
Jambi	2,649,034 (US\$184)
South Sumatra	3,144,146 (US\$218)
Bangka Belitung	3,264,884 (US\$227)
Bengkulu	2,238,094 (US\$155)
Lampung	2,440,486 (US\$169)
Banten	2,501,203 (US\$174)
DKI Jakarta	4,452,724 (US\$310)
West Java	1,841,487 (US\$128)
Central Java	1,813,011 (US\$126)
Special Region of Yogyakarta	1,840,951 (US\$128)
East Java	1,891,567 (US\$131)
Bali	2,516,971 (US\$175)
West Nusa Tenggara	2,207,212 (US\$153)
East Nusa Tenggara	1,975,000 (US\$137)
West Kalimantan	2,434,328 (US\$169)
South Kalimantan	2,906,473 (US\$202)
Central Kalimantan	2,922,516 (US\$203)
East Kalimantan	3,014,497 (US\$209)
North Kalimantan	3,310,723 (US\$230)
Maluku	2,618,312 (US\$182)
North Maluku	2,862,231 (US\$199)
Gorontalo	2,800,580 (US\$195)

North Sulawesi	3,310,723 (US\$234)
Southeast Sulawesi	2,710,595 (US\$188)
Central Sulawesi	2,390,739 (US\$166)
South Sulawesi	3,165,876 (US\$224)
West Sulawesi	2,571,328 (US\$182)
Papua	3,561,932 (US\$248)
West Papua	3,200,000 (US\$222)
West Papua	2,934,000 rupiah (US\$208)

## Laos

Laos has yet to implement an increase in its minimum wage since 2018. Back then, the Laotian government increased the minimum wage for all businesses and factories from 900,000 kip (US\$101) to 1.1 million kip (US\$124) a month.

The minimum wage was determined through tripartite social discussions between the employers' associations, workers' organizations, and government representatives.

## Myanmar

The daily minimum wage in Myanmar is revised every two years and discussions on the new rate will begin in May 2020.

Myanmar's current daily minimum wage is set at 4,800 kyat (US\$3.29) for eight hours of work. After conducting research on the cost of living and healthcare in the country, the Confederation of Trade Unions of Myanmar will propose a minimum wage increase of 7,200 kyat (US\$4.88) for eight hours of work or 9,000 kyat (US\$6.10) per hour.



## Malaysia

The Malaysian government has increased the minimum wage for major towns under 56 city and municipality councils. The new wage hike came into force on February 1, 2020.

### Regions Eligible for Minimum Wage Increase

#### City councils

Alor Setar, Iskandar Baru, Johor Baru, Ipoh, Penang, Melaka, Seberang Prai, Petaling Jaya, Shah Alam, Kuala Terengganu, Kota Kinabalu, Kuala Lumpur, Miri, Seremban, and Kuching Selatan

#### Municipality councils

Putrajaya, Bintulu, Labuan, Dungun, Sibul, Tawau, Kota Semarahan, Subgang Jaya, Kemaman, Sepang, Ampang Jaya, Batu Pahat, Alor Gajah, Hang Tua Jaya, Port Dickson, Teluk Intan, Klang, Kajang, Kangar, Taiping, Jempol, Alor Gajah, Jasin, Temerloh, Selayang, Kulai, Kluang, Pasir Gudang, Kubang Pasu, Segamat, Langkawi, Kuantan, Manjung, Bentong, Kulim, Muar, Kota Baru, and Kuala Kangsar



## Philippines

The Philippines has daily minimum wage rates that vary from region to region, ranging from PHP 316 (US\$6.26) to PHP 537 (US\$10.64) a day for 2021. The wages are set by tripartite regional wage boards located in every region.

The country's average minimum wage rate is among the highest in ASEAN – and compared to its neighbors Indonesia and Vietnam.

### Philippines Nominal Minimum Wage Rates 2021

Region	Minimum wage rate (non-agriculture)	Minimum wage rate (agriculture)	
		Plantation	Non-plantation
NCR	PHP537 (US\$11.17)	PHP500 (US\$10.40)	PHP500 (US\$10.40)
CAR	PHP350 (US\$7.28)	PHP350 (US\$7.28)	PHP350 (US\$7.28)
I	PHP340 (US\$7.07)	PHP295 (US\$6.13)	PHP282 (US\$5.86)
II	PHP370 (US\$7.70)	PHP345 (US\$7.18)	PHP345 (US\$7.18)

Philippines Nominal Minimum Wage Rates 2021			
III	PHP420 (US\$8.74)	PHP390 (US\$8.11)	PHP374 (US\$7.78)
IV-A	PHP400 (US\$8.32)	PHP372 (US\$7.74)	PHP372 (US\$7.74)
IV-B	PHP320 (US\$6.66)	PHP320 (US\$6.66)	PHP320 (US\$6.66)
V	PHP310 (US\$6.45)	PHP310 (US\$6.45)	PHP310 (US\$6.45)
VI	PHP395 (US\$8.22)	PHP315 (US\$6.55)	PHP315 (US\$6.55)
VII	PHP404 (US\$8.40)	PHP394 (US\$8.20)	PHP394 (US\$8.20)
VIII	PHP325 (US\$6.76)	PHP295 (US\$6.14)	PHP295 (US\$6.14)
IX	PHP316 (US\$6.57)	PHP303 (US\$6.30)	PHP303 (US\$6.30)
X	PHP365 (US\$7.59)	PHP353 (US\$7.34)	PHP353 (US\$7.34)
XI	PHP396 (US\$8.24)	PHP391 (US\$8.13)	PHP391 (US\$8.13)
XII	PHP336 (US\$6.99)	PHP315 (US\$6.55)	PHP315 (US\$6.55)
CARAGA	PHP320 (US\$6.66)	PHP320 (US\$6.66)	PHP320 (US\$6.66)
BARMM	PHP325 (US\$6.76)	PHP300 (US\$6.24)	PHP300 (US\$6.24)



## Singapore

Singapore's Ministry of manpower does not prescribe a minimum wage. As such, wages are determined on market demand and the supply of labor. Furthermore, employers are to pay employees based on their competencies, skills, and experience.



## Thailand

The Thai government announced an increase of between 313 baht (US\$10) –336 baht (US\$11) to the daily minimum wage starting from January 1, 2020, representing an increase of five baht (US\$0.17) to six baht (US\$0.20) from 2018.

Marking only the second time in seven years that the national daily minimum wage has been raised, the government identified nine provinces that will receive the six baht increase, while the rest of the country will see a five baht increase.

Minimum Wages in Thailand	
Daily minimum wage 2020	Provinces
313 baht (US\$10.36)	Narathiwat, Pattani, and Yala
315 baht (US\$10.45)	Uthai Thani, Trang, Tak, Sukhothai, Si Sa Ket, Sing Buri, Ranong, Satun, Ratchaburi, Phichit, Phrae, Nong Bua Lam Phu, Amnat Charoen, Chaiyaphum, Chiang Rai, Nakhon Si Thammarat, Maha Sarakham, Mae Hong Son, Lamphun, Lampang, Kamphaeng Phet, and Chumphon
320 baht (US\$10.59)	Ang Thong, Bung Kan, Buri Ram, Chai Nat, Kanchanaburi, Loei, Nakhon Phanom, Nakhon Sawan, Nan, Phattalung, Phayao, Phetchabun, Phetchaburi, Phitsanulok, Prachuap Khiri Khan, Roi Et, Sa Kaeo, Surin, Udon Thani, Uttaradit, and Yasothorn
323 baht (US\$10.69)	Samut Songkhram, Sakon Nakhon, Mukdahan, Nakhon Nayok, Kalasin, and Chanthaburi
324 baht (US\$10.73)	Prachin Buri
325 baht (US\$10.76)	Chiang Mai, Ayuttha, Khon Kaen, Ubon Ratchathani, Trat, Surat Thani, Suphan Buri, Songkhla, Phangnga, Saraburi, Nong Khai, and Nakhon Ratchasima
330 baht (US\$10.93)	Chachoengsao
331 baht (US\$10.96)	Bangkok, Samut Sakhon, Samut Prakan, Nakhon Pathom, and Pathum Thani
335 baht (US\$11.09)	Rayong
336 baht (US\$11.12)	Phuket and Chonburi



## Vietnam

Following the country's rapid economic growth, in the past few years, the Vietnamese government has increased minimum wages to combat inflation.

The monthly minimum wage rate was increased by 5.7 percent from January 1, 2020, higher than the 2019 hike of 5.3 percent. The country sets a different minimum wage level across its four regions. As a result of the new increase, Region I (urban Hanoi and Ho Chi Minh City) registered the highest minimum wage of VND 4,200,000 (US\$190) while Region IV was the lowest with VND 3,070,000 (US\$132).

Moreover, employees that have had vocational training must be paid at least seven percent higher than the applicable minimum wage rate.

The minimum wage rates are as shown below.

Businesses cannot reduce overtime, night shift, or other hardship allowances that are provided to employees when applying the new minimum salaries as per the labor law.

Vietnam Minimum Wage 2021			
Region	2020-2021 monthly minimum wage	Hike	2019 monthly minimum wage
I	VND 4,420,000 (US\$193.5)	VND 240,000 (US\$10.5)	VND 4,180,000 (US\$183)
II	VND 3,920,000 (US\$171)	VND 210,000 (US\$9)	VND 3,710,000 (US\$162)
III	VND 3,430,000 (US\$150)	VND 180,000 (US\$8)	VND 3,250,000 (US\$142)
IV	VND 3,070,000 (US\$134)	VND 150,000 (US\$6)	VND 2,920,000 (US\$128)

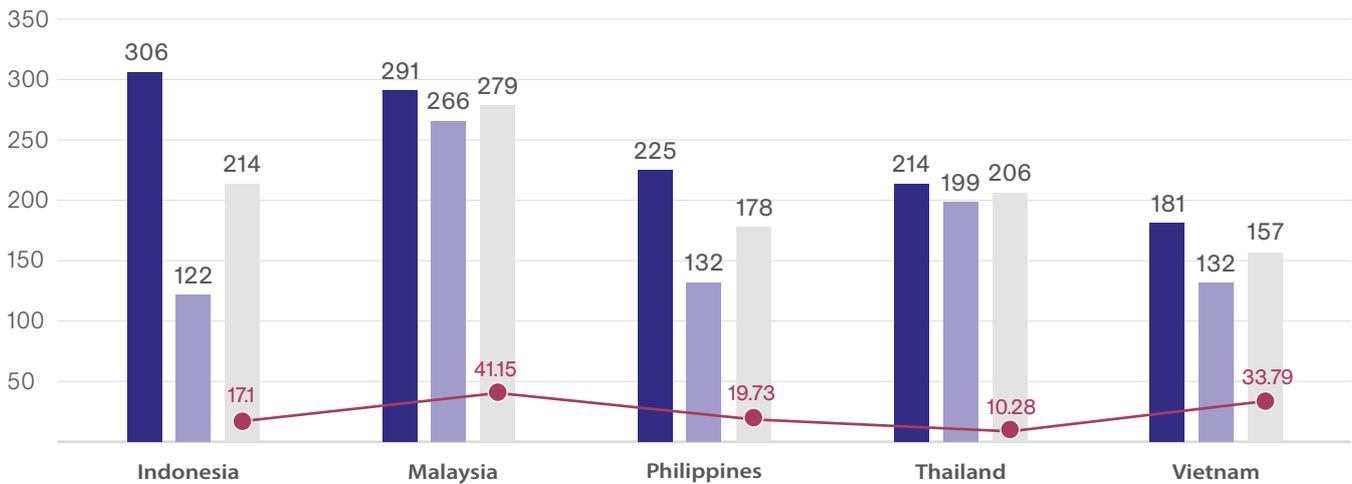
The capped salary for unemployment insurance will, therefore, increase as follows:

- Region I VND 884 million (US\$3,870) from the present VND 83.6 million (US\$3,660);
- Region II VND 784 million (US\$3,433) from 74.2 million (US\$3,249);
- Region III VND 68.6 million (US\$3,003) from 65 million (US\$2,846); and
- Region IV VND 614 million (US\$2,688) from 544 million (US\$2,382).

Vietnam has set different minimum wage levels for the four regions to reflect the cost of living in each area.

Monthly Minimum Wages in ASEAN, Estimated Rates by Country (in US\$)

■ High ■ Low ■ Mid ● Approx. employer social security costs (US\$) (based on mid wages)



Note: Philippines and Thailand values based on 21 working days as their minimum wage rates are based on daily rates. Furthermore, the wages for the Philippines represent non-agriculture employment.

Monthly Salaries for Manufacturing and Non-Manufacturing Employees in ASEAN (in US\$)

Manufacturing — Worker — Engineer — Manager

Non-manufacturing — Staff member — Manager



Source: Jetro 2020 Survey

# Assessing current talent in selected ASEAN

Foreign investors looking at ASEAN need to understand the availability of talent and regulatory conditions as it exists in each member state.

A regional bloc with over 600 million people, ASEAN is endowed with a diverse workforce, but these are spread across different levels of the developmental spectrum. Efficiency driven economies in ASEAN, such as Indonesia, Vietnam, Thailand, and the Philippines boast of competitively priced labor and basic regulatory infrastructure.

ASEAN members at this stage of development can be utilized for the manufacture of complex goods and the provision of limited value-added services. Factor driven economies, such as Cambodia, are characterized by low education levels and incomes, and are best positioned to provide basic manufacturing services, and the production of basic components as part of an extension of more complex production lines from countries such as China.

Further, innovation driven economies like Malaysia and Singapore can conduct high- value manufacturing, provide professional services, and assemble complex components. However, human resources are considerably more expensive in these countries.



## Cambodia

### Current outlook

Prior to the pandemic, Cambodia had the highest labor participation rate in Southeast Asia with over 80 percent of the working population aged between 16-64 were employed or seeking employment.

However, Cambodia's workforce is characterized by low education and low-to-medium-skill levels, in addition to low-technical literacy. Of the more than three million 'wage employees', more than 50 percent are concentrated in three sectors: textiles, garments, and footwear manufacturing; agriculture; and construction.

### Challenges

Some 89 percent of the workforce has completed primary education (or less), while only six and five percent have completed secondary and post-secondary school, respectively. The majority are still employed in Cambodia's textile, garment, and tourism industries play an important role in the country's economy, contributing to over 30 percent of the total GDP combined.

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## Going forward

The government is looking at new sectors to help with economic development. The country is eager to develop its human resources in manufacturing, such as for food and beverages, plastics, as well as paper processing.

## Indonesia

### Current outlook

Indonesia has ASEAN's largest labor force of over 136 million people with the majority being relatively young.

Higher education institutions are dominated by smaller private providers of lower quality, while public universities are highly competitive. Further, the disparity in economic development between each province means unemployment rates between provinces can vary substantially.

### Challenges

Indonesia only has an estimated 55 million skilled workers. According to the Master Plan for the Acceleration and Expansion of Economic Development in Indonesia (MP3EI), the country will need 113 million skilled workers by 2030. Furthermore, many vocational training programs do not meet industry needs. This has contributed to the fact that the majority of the country's workforce is employed in the informal sector.

## Going forward

Indonesia is expected to experience a demographic bonus in the coming decade with 70 percent of the population becoming working adults by 2030, making the country ripe for increasing economic growth. As such, policymakers are prioritizing vocational training to strengthen the skills of the Indonesian workforce as the country looks to solidify its standing as a G20 member.

## Malaysia

### Current outlook

Malaysia is fast becoming a sub-regional interconnectivity hub for Southeast Asia and according to the World Bank, the country is likely to transition to a high-income economy between 2024 and 2028, despite setbacks caused by the pandemic.

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Living standards have been transformed in less than a generation and poverty has been slashed to less than one percent of the population. Further, Malaysia's GNI per capita is at US\$11,200 which is only US\$1,335 short of the current threshold level that defines a high-income economy.

The government has recognized the importance of developing high-quality human capital to facilitate economic growth. Despite its status as a growing regional hub, only 28 percent of Malaysia's workforce is classified as highly skilled, and more than half of the jobs in the country are at risk of displacement by technology.

## Challenges

Like many of its ASEAN peers, Malaysia also suffers from a shortage of skilled workers (only 28 percent of Malaysia's workforce is classified as highly skilled) and employers' over-reliance on cheap and unskilled foreign labor has exacerbated this problem.

## Going forward

The government has enacted a multi-pronged approach to developing the local labor market, such as increasing public-private partnerships in addition to initiatives to address the gaps in skills shortages. These include the expedition of disseminating knowledge transfer.



# Philippines

## Current outlook

The Philippines has seen steady GDP growth over the last decade, but this performance has come with a pattern of slow job growth — GDP is not translating into meaningful job creation. The country has a labor force of about 42 million and a labor force participation rate of 63 percent. Over 10 million are in the informal sector, and nearly 40 percent of the workforce is considered employed in 'vulnerable' sources of employment.

## Challenges

According to the Philippine Department of Labor and Employment, the country has a shortage of an estimated one million skilled workers in the fields of engineering, architecture, and construction.

A major contributor to this problem is the brain drain due to the large and sustained outmigration of nationals to work abroad. The Philippines has a sophisticated labor-exporting model, with the Commission on Filipinos Overseas (CFO) estimating that 10.2 million Filipinos are overseas.

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## Going forward

The Technical Education and Skills Development Authority is collaborating with the Information Technology and Business Process Association of the Philippines (IBPAP) to develop a blueprint with the aim of upgrading the Philippines' IT-BPO sector, which the government hopes can provide 1.8 million jobs by 2022.



## Singapore

### Current outlook

Singapore has a highly skilled population and the government consistently monitors and analyzes its labor market to make evidence-based predictions on future needs. The country is recognized as a global leader in innovation, supported by a strong tertiary education system, and business friendly regulatory environment.

According to the International Institute for Management Development (IMD) World Competitiveness Centre, Singapore was ranked ninth in the list of the most competitive countries for talent globally, in 2020. It was the only Asian country in the top 10 in this latest ranking.

### Challenges

Singapore's workforce is ageing. It is expected that by 2030, one in four Singaporeans will be over the age of 65, putting pressure on healthcare, pensions, and long-term economic growth. The government is expected to increase the retirement age to 63 in 2022.

### Going forward

Singapore has no natural resources, and therefore its government has successfully embraced its people as its most important asset. The government will continue to invest heavily in training programs and education institutions. Singapore's students consistently perform the best globally in mathematics and literacy skills.

Moreover, Singapore will continue to excel in attracting foreign multinationals (MNC) to establish their regional headquarters in the city-state; it is home to over 7,000 MNCs.

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 **Thailand**

### Current outlook

Despite years of political instability, Thailand has been a popular destination for foreign investment, moving from a low-income to an upper-middle-income economy in less than a generation. Major sectors of the economy are the electrical appliances and electronics (E&E), automotive, tourism, and metal processing.

### Challenges

Although its economy has a higher degree of complexity, the country still suffers from a severe lack of technical specialists and investments in innovation and technology. This is key if Thailand wants to escape the middle-income trap, which has plagued the country for years.

For the economy to move to higher value activities, Thailand needs to boost the availability of vocational skills, especially in and science, technology, engineering, and mathematics (STEM) – the country has a systematic undersupply of secondary and lower vocational skills.

### Going forward

The government is aiming to revitalize vocational schools so that they meet regional standards, particularly as more investors in the country's Eastern Economic Corridors (EEC) – a special economic zone – are adopting more modern technologies.

 **Vietnam**

### Current outlook

Vietnam has become an increasingly attractive place for businesses of all types, given the country's growing consumer class and dynamic workforce.

Much of this economic growth has come from the movement of people from traditional agriculture to the manufacturing and services industries, in addition to the increased mechanization of the agriculture sector itself.

Vietnam has one of ASEAN's largest labor markets, which whose strength is approximately 56 million people, and with a labor participation rate of 76 percent. Due to the developing nature of the workforce in Vietnam, it is natural that there exists some difficulty in finding highly skilled employees – only 12 percent of Vietnam's workforce are considered highly skilled.

## Challenges

Skills and talent shortages are particularly acute in industries such as technology and banking. The country is currently lacking over 70,000 IT workers per year and the government is setting a target of creating a pool of 1.3 million IT workers by 2025.

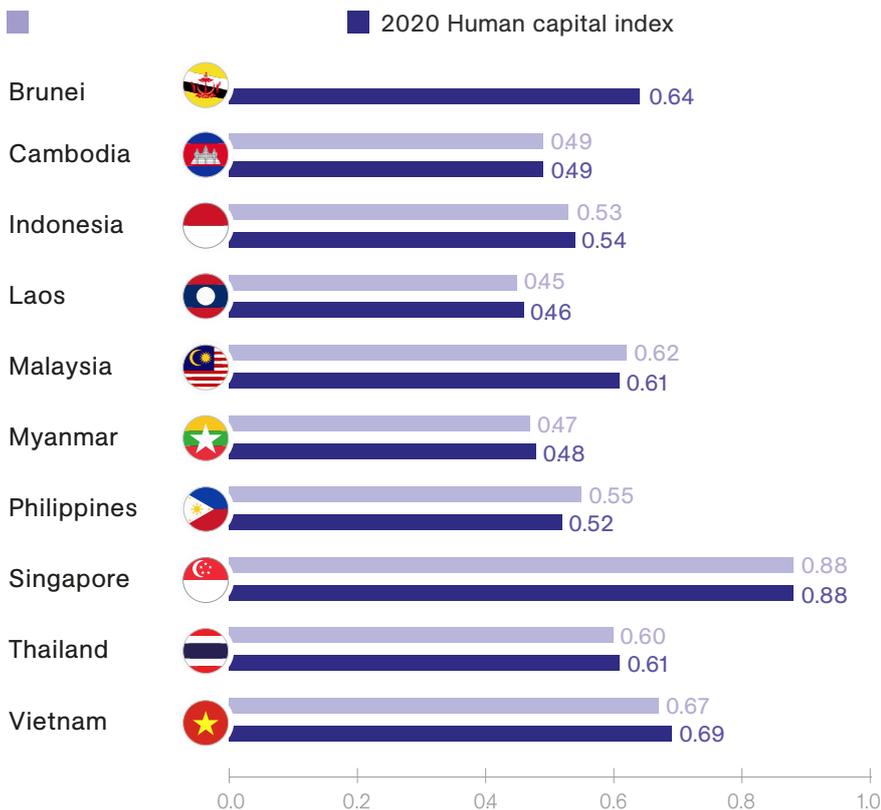
Further, the US-China trade war has aggravated the existing shortage for quality labor as more companies shift all or part of their manufacturing to Vietnam, particularly for engineers, managers, and software developers.

## Going forward

To address the challenges within its labor force, the Vietnamese government has announced it will prioritize adapting its industries to a digital future and will improve the accessibility of on-the-job training programs in these fields.

The vocational education system is also increasing its commitment to work with the private sector to establish more enterprise-based training programs. Vietnam's business climate already encourages innovation and attracts foreign investment, and so an enhanced learning ecosystem will allow the country to respond well to the latest technological disruptions.

### ASEAN Human Capital Index



Human Resource Development Indicators in ASEAN						
Indicators	Indonesia	Malaysia	Philippines	Singapore	Thailand	Vietnam
Total population (2020)	273,523,615	32,365,999	109,581,078	5,850,342	69,799,978	97,338,579
Total labor force (2020)	134,616,083	15,904,215	43,719,193	3,472,519	38,483,357	56,542,377
GDP per capita (US\$) (2020)	3,921	10,270	3,330	58,902	7,579	3,498
Secondary education attainment rate (15-24 age group (%))	78.3	92.7	85	95.8	75.7	54.5
Tertiary education attainment rate (15-24 age group (%))	31.1	26.1	35.8	41.8	48.9	28.8
Vocational education enrolment rate (15-24 age group (%))	42.4	21.1	N/A	11.2	19.8	N/A
High-skilled employment share (25-54 age group (%))	9.9	25.5	24.1	56.2	14.0	10.8
Medium-skilled employment share (25-54 age group (%))	81.9	86.2	68.4	92.3	90	60.1
Share of informal employment (%)	80.4	16.8	57	N/A	64.4	67
Voluntary Turnover (%) for 2020	34	5.9	5.1	5	5.2	7.3
Unemployment Rate (%)	4.11	4.55	3.36	5.19	0.18	2.27
Ease of finding skilled employees (scores)	59.2	67.9	67.1	68.8	50.4	49.3
Quality of vocational training (scores)	60.1	68.1	62.4	73.3	51.6	44.0
Labour Productivity (\$) (Output per worker (GDP constant 2011 international \$ in PPP for 2019))	24,425	59,364	21,832	159,680	33,502	13,817

Source: Human Resources Development Readiness in ASEAN report 2021, [www.statista.com](http://www.statista.com), Global Competitiveness Report, [ilostat.ilo.org](http://ilostat.ilo.org)

## Labor Compliance Across Major ASEAN Economies

-  Probation period
-  Standard working hours
-  Retirement age (years)
-  Employment dispute channels
-  Statutory annual paid leave



Source: 2021 Asia-Pacific Labour Law Comparison Chart

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# Assessing ASEAN's Industrialization Plans

ASEAN members are targeting specific sectors that will shift their economies up the global value chain and thus from low to medium-and high-skilled industries. These prioritized sectors will require specific human resource development (HRD) strategies as the structural change from low to high-skilled industries requires time to achieve, particularly since low-skilled industries are still running profitably.

We provide an overview of several of these target sectors for the national industrialization plans in ASEAN's major economies.

## Indonesia

Indonesia shows strong growth potential for foreign investors looking at long-term commitments in ASEAN.

### Manufacturing

The government is pledging to transform Indonesia's low-value manufacturing capabilities into a sector that can produce complex products and new technologies. The sector annually contributes to 20 percent of the national GDP and employs 15 percent of the total workforce. By upgrading this sector, the government hopes to turn Indonesia into a manufacturing hub in ASEAN, rivaling those of Germany and South Korea by 2030.

### Digital economy

Indonesia's digital-based economy is predicted to be valued at US\$130 billion by 2025, making it the largest in Southeast Asia. The e-commerce sector will play a vital role in this industry, with over 170 million people already engaging in some form of online shopping. The digital economy is also set to impact the growth of new sub-sectors within this sector, such as telemedicine, online education, and electronic payment systems.

## Malaysia

Malaysia has shown to be a popular destination for foreign companies based in China looking to alternative locations to supplement their Chinese operations.

### Manufacturing

Malaysia is increasing mechanization in its manufacturing sector to maintain productivity growth. The country already produces over eight percent of global back-end semiconductor output. Local players are hoping to move up the value chain to be better able to compete globally and are looking to develop local talent to help facilitate this goal.

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## Healthcare

The country is competing with Thailand and Singapore to become a medical hub in ASEAN, especially in the field of medical tourism. The healthcare industry is expected to be valued at US\$30 billion by 2027, fueled by increasing domestic demand from an increasingly affluent and aging population.

Medical tourism will also play an important role, with the country attracting more than one million medical tourists in 2019, generating US\$433 million in revenues. This was an increase from the US\$361 million garnered in 2018.

## Digital economy

Malaysia's digital economy now contributes to one-fifth of the national GDP, valued at over 270 billion ringgit (US\$65 billion), making the country among the most digitally mature in the region.

COVID-19 has accelerated the industry's share of GDP due to the increase in online shopping, online education, and telemedicine. Despite this, six out of 10 companies are only at the basic digitalization stage, highlighting the future capabilities of this sector.

## Singapore

Strategically located in the region, Singapore has the expertise and infrastructure to enable foreign investors to access other ASEAN markets.

## Manufacturing

Manufacturing is Singapore's largest industry, contributing to between 20 and 25 percent of GDP.

Key sub-sectors include chemicals, electronics, biomedical sciences, logistics, and transport engineering. The country's Economic Development Board (EDB) laid out a roadmap to attract investments from lead adopters of advanced manufacturing. Singapore's pharmaceutical and biomedical industries are fast becoming leading drivers of economic growth not only for the country's healthcare industry but also its manufacturing sector.

The country's deep base of skilled talents, pro-business environment, infrastructure, and thriving research and development landscape has attracted some of the largest pharmaceutical firms in the world. This has resulted in Singapore being one of the few countries able to export more pharmaceutical products (approx. US\$8.1 billion in 2019) than it imports (US\$3.19 billion in 2019).

Moreover, Singapore's medical devices industry is expected to be worth US\$1.3 billion by 2022 due to increasing government spending, an ageing local population, as well as demand from the region.

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More than 60 multinational medical technology (medtech) companies leverage the country's strong engineering capabilities and high-quality assurance to manufacture high-value products, ranging from life science instruments to contact lenses.

## Status as an entrepot trade and financial hub in Southeast Asia

Singapore will continue to enhance its status a key trading and financial hub in ASEAN, and as such will continue to develop its local talent pool as well as attract highly skilled foreign workers.

The country issued a new work permit in January 2021, named Tech.Pass, aimed at attracting technology entrepreneurs and experts. Multinationals will continue to be incited by Singapore's stable legal, tax, and business environment. As a country that has gradually established itself as a leader in global financial services, the city-state has been placed more in the spotlight as a regional hub for trade since the protests in its rival, Hong Kong.

Singapore also offers foreign investors a diverse investment community. The country is home to the regional headquarters of some 7,000 multinational firms, with more than half running their Asia-Pacific businesses from the city-state, while Hong Kong had just over 1,000. Further, the Port of Singapore is strategically located at the crossroads of East-West trade channels and is connected to 600 ports in over 120 countries. It also handles over 37.2 million twenty-foot equivalent units (TEUs) of containers and 626.2 million tons of cargo annually, making it one of the world's busiest.

## Thailand

Before the onset of COVID-19, Thailand had one of the fastest growing economies in the Indochina and Greater Mekong subregion. Driven by both abundant natural resources and a cost-effective labor force, the country features consistently among the most popular FDI destinations in the region.

### Manufacturing

The manufacturing sector constitutes 30 percent of Thailand's total GDP, covering a variety of goods, such as textiles and garments, footwear, electronics, automobiles and parts, and integrated circuits. The government is looking to new technologies, such as cloud computing, the internet of things (IoT), and robotic automation to upgrade this sector and attract foreign investments.

The country is a major exporter of hard drives and is the world's second-largest exporter of washing machines and air conditioners.

Furthermore, Thailand is fast becoming a hub for aerospace industry, and maintenance, repair, and overhaul (MRO) services. The country's major airlines – Thai Airways, Bangkok Airways, and Thai Lion Air – have all established MRO centers to service their aircraft and those of airlines that service Thailand and the region. Thailand's MRO industry is expected to be valued at US\$2.9 billion by 2037, boosted by its fleet of 800 aircraft and servicing over 180 million passengers in the country.

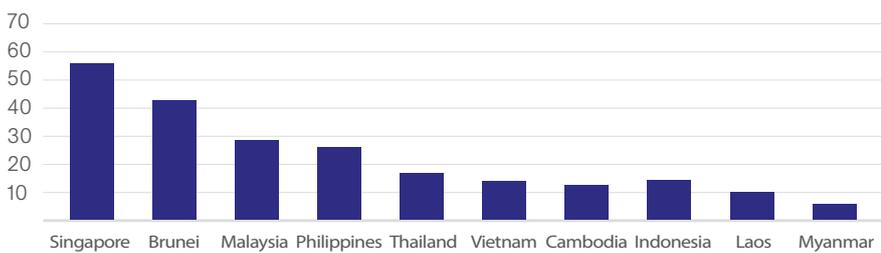
## Vietnam

Prior to the COVID-19 pandemic, the influx of foreign investment into Vietnam resulted in its economy growing at seven percent in 2019, one of the fastest in the region.

### Electronics manufacturing

Vietnam climbed the ranks as an electronics exporter from 47th in 2001 to 12th in 2019, caused by the supply chain shifts from China into Southeast Asia. Its mobile exports were ranked second highest worldwide, valued at over US\$50 billion, in 2019. The electronics industry is already dominated by established foreign companies, accounting for over 90 percent of total exports as well as 80 percent of the domestic market.

Employment in High-skilled Occupations (% in total employment), 2017



Source: Human Resources Development Readiness in ASEAN report 2021



# Factors impacting HR development in ASEAN

There are several global megatrends that are set to impact human resource development in ASEAN. Digital transformation, climate change and green investments, and ageing societies present new challenges and opportunities for foreign investors. The trends give rise to changing skill requirements.

## Digital transformation

The COVID-19 pandemic has accelerated digital transformation in ASEAN. Disruptive changes brought about by digitalization and automation are pushing ASEAN members to move from being a relatively labor intensive and low value-added base to higher-value manufacturing production that fosters the development of high-tech sectors.

Moreover, the disruptions are expected to relegate many jobs to automation, resulting in some occupations becoming obsolete. The latest wave of technology advances in areas such as robotics, cloud computing, internet of things, and artificial intelligence, among others, means there will be greater expectations for a company's human resource.

According to a report by Bain & Company, Google, and Temasek, Southeast Asia's digital economy will be valued at US\$300 billion by 2025. The region is already home to one of the largest concentrations of tech startups and home to over 400 million internet users.

## Climate change and green investments

The agriculture-based economies of most ASEAN countries are extremely vulnerable to climate change and represents one of the greatest threats to long-term stability of the region. According to the Center for Strategic and International Studies (CSIS), daily high tides will flood areas home to over 48 million people in the region, which will compound food and water insecurities.

There are, however, new opportunities in the 'green economy', which can offset job losses in traditional sectors due to climate change. Many ASEAN member states have implemented policies in the area of environmental transformation and thus require talent competent to serve these 'green jobs'.

Malaysia is looking to develop competencies in green buildings, renewable energies, and bioengineering, whereas Singapore issued the world's first grant scheme to support green and sustainability-linked loans (GSLs) in November 2020. The Singapore scheme will assist corporations by defraying the expenses incurred from engaging with independent advisors to validate green and sustainability-linked loans.

Indonesia is developing a new and 'green' capital city, powered by the newest technology and low-carbon, sustainable energy sources. The new site will be four times the size of Jakarta — a megacity — set up at a cost of US\$33 billion.



Thailand has also partnered with the UK to promote the development of smart cities to be constructed across Thailand. Both countries launched the UK-Thailand Smart City Handbook, established in partnership with Thailand's Digital Economy and Promotion Agency (DEPA).

## An ageing ASEAN

Although more than half of Southeast Asia is currently under the age of 30, the region has a rapidly ageing population; by 2035, ASEAN is projected to have more than 127 million people aged 65 years or older.

By 2035, Singapore will have 26 percent of its population over the age of 65 and the ageing population of Thailand is expected to reach 28.8 percent.

Some 20 percent of Vietnam's population will also be over 65 by 2038, and Malaysia's will become an ageing society by 2030, when 15 percent of its population will be 60 years and above. These demographic shifts will result in a shrinking of the Southeast Asian bloc's working-age population.

Skill development will be crucial in enhancing the capacity of a shrinking workforce and support the next stage of economic development. Moreover, ASEAN could take lessons from the EU and promote active ageing. Under this principle, the EU invoked a higher retirement age and working activities that are adapted to the age of the employee. In turn, the region saw the share of people aged 55 years and over in total employment increase from 12 percent to 20 percent between 2004 and 2019.



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Audit compliance is one of the most important tasks that needs to be undertaken by companies at the beginning of a new fiscal year. This process can be even more complex when doing business in the evolving markets of emerging ASEAN, despite laudable steps towards regulatory harmonization.

As the region becomes more attractive for foreign investors, it is important for all companies to be informed on the latest updates and regulations to remain in compliance.



## Brunei

The Companies Act regulates the audit and accounting requirements that companies must adhere to in Brunei.

### Auditing and compliance requirements

A company limited by shares with no more than 50 shareholders must audit their accounts but are not obligated to submit their accounts to the Registry of Companies and Business Names (ROCBN).

A company limited by shares (public companies) of more than 50 shareholders, or companies limited by guarantee are obligated to have their accounts audited in addition to filing these accounts to the ROCBN.

Companies must keep proper accounts and books with respect to;

- All sales and purchases of goods and services by the company;
- Every amount of money received and paid by the company; and
- A record of all the assets and liabilities of the company.

This is done by maintaining a cash book to record the receipts and payments made by the business in addition to a journal to record other non-cash transactions. Finally, businesses should maintain a ledger to record the transactions made in the cash book and journal.

### Annual general meetings

A company's first AGM should be held within 18 months after incorporation and subsequent AGMs are to be held once every year and cannot be more than 15 months apart.

The meeting needs to be called in writing at least 21 days before the start date, with the directors, at least seven days before the meeting is held, sending a statutory report to every member of the company.

This report must be certified by at least two directors and must state:

- The total number of shares allotted;
- The total number of cash received by the company;
- Names and addresses of the directors, auditors (if any), company secretary, and managers and;
- Company receipts.

## Appointing auditors

A company must appoint an auditor to have its accounts audited. These appointments are to be done at the AGM, and the auditor(s) will hold this position until the next AGM. The Public Accounts Oversight Committee (PAOC) is the main body responsible for regulating public accountants in the country.

Companies must allow auditors access to the accounts and books of the company and are entitled to enquire from the directors and managers such information and explanation.

The remuneration of the auditor is decided and fixed in the AGM unless the auditor is appointed to fill a vacancy, in which case the directors will decide the remuneration amount.

Private companies are only exempted from audit requirements if:

- Revenue for that year does not exceed BND 1 million (US\$72,9398);
- Its shares are held, directly or indirectly, by another corporation; and
- The company has no more than 20 members.

In addition to the aforementioned criteria, dormant companies – those that have no accounting transactions – can also be granted audit exemptions. They must be:

- Dormant from the time of incorporation; or
- Were dormant from the previous financial year.

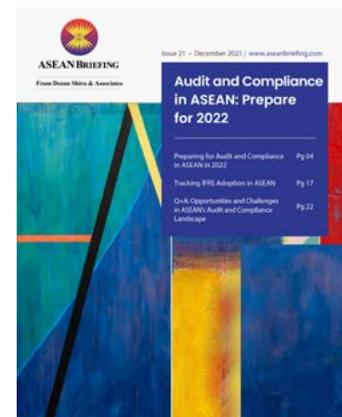
### *Audit committees*

Public companies must have an audit committee, who will elect a chairman from amongst them who is not a director or employee of the company. The function of the audit committee will be to:

- Review audit plans with the auditor;
- Evaluate internal accounting controls;
- Evaluate audit reports; and
- Evaluate balance sheets.



### RELATED READING



#### **Audit and Compliance in ASEAN: Prepare for 2022** *ASEAN Briefing Magazine* *December, 2021*

In this issue of ASEAN Briefing magazine, we provide an overview of the audit and compliance requirements in ASEAN's six largest economies. We then explore the length of IFRS adoption in ASEAN and provide answers to often asked questions about ASEAN's auditing landscape

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## Fiscal periods

All companies must file their tax returns using the e-filing system (STARS) by June 30 of every year. Businesses are not allowed to submit consolidated returns with each company having to file a separate return.

## Accounting standards

Brunei adopts two types of accounting standards, the IFRS, which is issued by the IASB, and the Brunei Darussalam Accounting Standards (BDAS).

The IFRS principles are used for entities that have public accountability (public interest entities, PIE), whereas BDAS is issued for non-public interest entities. The entity has public accountability if its debt or equity instruments are traded in a public marketplace or it is in the process of doing so.

BDAS was introduced to provide transparency of financial statements prepared by non-public interest entities (non-PIEs), as previously there were several ways businesses could present their financial statements, thus often not reflecting the company and industry they operate in.

## Annual reports

As stipulated in the Companies Act, annual reports must be filed within 28 days after the AGM. The company's officers, such as directors or secretary, can file the annual returns; the company can also engage the services of a professional firm to file on their behalf.

The required documents needed to file annual reports are:

- Annual return form;
- Date of AGM with proof;
- Audited financial statements (for public companies); and
- Cover letter stating the name of the company and its registration number.

Dormant companies are still required to submit annual returns and will be subject to any fees payable to the Registrar.

## Penalties for non-compliance

A fine of BND10,000 (US\$7,294) and imprisonment of up to 12 months can be imposed for entities that fail to file. Businesses that do not hold an AGM can be liable to a fine of BND5,000 (US\$3,647), with directors also liable to a fine of BND2,500 (US\$1,094).



# Cambodia

Resident taxpayers are subject to tax on their worldwide income while non-resident taxpayers are taxed on their Cambodia-sourced income only.

Resident taxpayers will have their principle place of business in Cambodia whereas a non-Cambodian national will be considered a resident taxpayer if they are in Cambodia for more than 183 days or have their principle place of abode in the country.

## Auditing and compliance requirements

All business entities, that meet the criteria set out in Prakas 643 of the Ministry of Economy and Finance must submit their financial statements to be audited by an independent auditor.

The business must fulfil at least two of the three following criteria:

- Businesses that have annual turnover of 4 billion riel (US\$986,000);
- Businesses that have total assets of over 3 billion riel (US\$740,000); and
- Have more than 100 employees.

## Appointing auditors

On July 10, 2020, Cambodia's Ministry of Finance and Economy issued Ministerial Order 563 (MO 563), which sets out the requirements for the types of business entities that must be independently audited.

Under MO 563, public companies, companies with public accountabilities (businesses that have debt instruments), and 'investment projects', are obligated to be independently audited for each financial period. The regulation also states that other business entities that achieve a certain annual turnover or have assets of a certain value will also need to be independently audited.

Businesses that are obligated to be audited are required to do so for a minimum of three consecutive years, and the issuance of the audit report shall be completed no later than six months from the closing date of the accounting period.

### *How are these entities defined?*

Companies with public accountabilities are those that have debt instruments traded in the domestic or international stock market.

These also include enterprises that hold assets in a fiduciary capacity (holding or managing assets on behalf of persons that are unrelated to the company. These are banks, insurance companies, credit unions, and mutual funds, among others.



Public companies are those that are effective under the Law on the General Status of Public Enterprise.

Non-profit organizations will also need to be audited if they meet the following criteria:

- Have annual expenses of more than 2 billion riel (US\$489,000); and
- Have more than 20 employees.

### **Certificate of compliance**

Enterprises that are classified as Qualified Investment Projects (QIPs) must submit a certificate of compliance (CoC) by March 31 of each year in which they were given a Final Registration Certificate by the Council for the Development of Cambodia (CDC). Without a CoC, the entity could lose its investment incentives.

The following documents need to be submitted to obtain the CoC:

- Articles of incorporation;
- Articles of incorporation issued by the MoC;
- Latest audited financial statements;
- Latest patent tax certificate;
- Certificate pertaining to tax obligations from the Tax Department;
- Latest information regarding the import of materials or equipment by the QIP;
- The CoC from previous years (if applicable); and
- Latest company information extracted from the MoC website (business extract).

## **Fiscal periods**

The tax and accounting year in Cambodia do not need to coincide with the calendar year. If a company is established during the financial year, then the first period of accounts will run from the date of incorporation to December 31.

## **Accounting standards**

The National Accounting Council of Cambodia has adopted the same standards as the IFRS for SMEs. The standards are referred to as the Cambodian International Financial Reporting Standards (CIFRS for SMEs) and the Cambodia International Financial Reporting Standards (CIFRS).

Businesses registered as QIPs must have their financial statements audited by an external independent auditor registered with the Kampuchea Institute of Certified Public Accountants and Auditors.



Investment projects are defined as QIPs. QIPs are projects that are eligible to receive fiscal and non-fiscal incentives from the Cambodian Investment Board. They are divided into three types – domestic QIPs, export QIPs, and supporting industry QIPs.

## Annual reports

All companies regardless are required to prepare their documents in the Khmer language and must use the Khmer Riel on all accounting records. However, financial statements can also be prepared in English and other foreign currencies if the business activities are with foreign entities.

Businesses should provide the following:

- Financial statements;
- Statement by directors on the financial statements;
- Statutory declaration by the director or officer primarily responsible for financial management; and
- Auditor's report.

All business entities registered with the Ministry of Commerce (MoC) are required to file an Annual Declaration of Commercial Enterprises (ADCEs) on the MoC's online system within three months of re-registration with the MoC. Failure to do so could result in a 2,000,000 riel (US\$493) fine.

Tax returns for monthly taxes, such as withholding tax and corporate income tax, must be filed monthly, and within 20 days of the following month. This will be extended if the 20th day falls on a public holiday or non-working day.

## Penalties for non-compliance

Penalties for non-compliance apply to failure to file, late filing, or filing fraudulent returns. The resultant penalties range from 10, to 25, to 40 percent and interest of 1.5 percent for late or unpaid taxes.

## Indonesia

There is currently no single unifying regulation on auditing and compliance in Indonesia. Foreign investors will need to be aware that regulations regarding auditing, accounting, and financial reporting are stipulated over several laws and bylaws, and that a good understanding of these can ensure their business stays compliant.

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Foreign investors should, however, focus on the Company Law, which dictates the terms for when audits become obligatory in addition to the accounting standards companies should adhere to when preparing financial statements.

## Auditing and compliance requirements

The Investment Law lays out the basic requirements on how to operate in Indonesia. These are part of key compliance norms:

- Implementing good corporate governance;
- Undertake corporate social responsibility activities;
- Comply with the labor law;
- Submit quarterly investment activities to the Investment Coordinating Board (BKPM); and
- Honor the cultural traditions of communities.

The Company Law mandates that financial statements of a limited liability company must be audited by a public accountant registered in Indonesia if they meet at least one of the following criteria:

- Companies with assets exceeding 50 billion rupiah (US\$3.6 million);
- Public companies;
- Companies that issue debt instruments;
- The company is a state-owned enterprise; or
- The company collects or manages public funds (such as banks and insurance companies).

By law, a company must keep its accounting records and books for at least 10 years from the end of its reporting period.

### Public companies

Under the Capital Markets Law, foreign companies are allowed to be listed in the country's bourse.

Their prospectus, however, must first be audited by an auditing firm that is recognized by the country's Financial Services Authority (OJK), the main regulator of Indonesia's financial services sector.

Public companies must comply with the format set out by the Capital Market and Financial Institutions Supervision Agency (Bapepam-LK). They are required to submit to the Bapepam-LK, their audited financial statements by three months before the end of their financial period.

Public companies must also establish internal audit committees, an internal audit unit, and a company secretary. The audit committee supports the board of commissioners to ensure the effectiveness and integrity of a company's financial statements and internal controls.

## Auditor independence

Indonesian Auditing Standards require that the auditor must be a registered and independent public accountant as stipulated by the Ministry of Finance (MOF). They must avoid all potential conflicts of interests and adhere to MOF regulations.

The Indonesia Financial Services Authority stipulates the mandatory rotation of the public accountant every three years with a two-year cooling period. This only applies to the public accountant and not the public accountant firm.

## Fiscal year

The annual deadline for reporting and paying corporate income tax is April 30 – if a company's fiscal year begins from January 1 – December 30. If a company's fiscal year differs from the calendar year, then their deadline is four months after the end of their fiscal year.

## Accounting standards

Audits are to be conducted based on the Indonesian Financial Accounting Standards (SAK), which are set by the Financial Accounting Standards Board (DSAK IAI) and the Indonesian Sharia Accounting Standards Board (DSAS IAI), for sharia-based companies.

Since 2015, the DSAK IAI has converged its accounting standards with that of the International Financial Reporting Standards (IFRS), issued by the IFRS Foundation and the International Accounting Standards Board (IASB). Current harmonization revolves around the chronological adoption of past IFRS with emphasis on closing the gap between Indonesia's adoption status and the most up to date International standards.

Currently SAK is broken down in two tiers:

- Tier 1 SAK – applies to listed companies and other entities with significant public accountability.
- Tier 2 SAK ETAP – applies to entities with low public accountability. Tier 2 SAK ETAP was developed with IFRS for SE as its point of reference.

This is part of Indonesia's efforts to make local financial statements more comparable and understandable across international boundaries as the country aims to attract greater foreign investment and play a more prominent role within the G20.

## Annual reports

Every registered company's annual financial statements are to be submitted to a regional tax office once a year. Financial statements consist of the following:

- Balance sheet;
- Cash flows;
- Profit and loss statement; and
- Statement of changes in equity.

Financial statements are required to provide both the current and previous year's figures and need to be presented on a comparative basis. All financial statements must be prepared in the Indonesian language. A company can use another language only if it has received permission from the MOF.

The accounting books must also use the rupiah as its currency. Companies will need to seek permission from the tax authorities for the use of the US dollar, the only other eligible functional currency.

## Penalties for non-compliance

Companies that fail to comply with Indonesia's audit and tax requirements can expect to receive monthly interest penalties, starting from two percent and up to 48 percent. Furthermore, issuing false tax and accounting documents can also result in imprisonment.



## Laos

The Enterprise law and the Law on Independent Audit are the main laws that establish audit requirements in Laos.

## Auditing and compliance requirements

Mandatory audits are required for companies with total assets of more than 50 billion kip (US\$46 million). This is also the case for public interest entities (PIE), foreign enterprises, state-owned enterprises, and other external loan and grant projects. These companies must strictly conduct bookkeeping obligations and responsibilities from the date of their registration

### Appointing auditors

The Ministry of Finance is responsible for setting the auditing standards, which is the International Standards on Auditing (ISA).

There are two types of independent audits:

- Statutory audits – this is a mandatory audit of the auditee’s financial statements; and
- Contractual audits – this is the voluntary audit requested by the auditee for the examination of its financial statements.

The audit process for non-PIE is as follows:

1. Auditor selection – this is done by shareholder votes or upon the proposal by an investor;
2. Audit engagement and preparation;
3. Audit planning – defining an audit strategy and program as well as engaging in evidence;
4. Audit performance – performing the audit in accordance to the audit strategy; and
5. Auditor’s report preparation.

For PIEs, the audit process is:

1. Selection of statutory auditor – this is done at least 60 days before the shareholders’ meeting;
2. Timing and termination of audit agreement – the audit agreement between the PIE and the audit firm is five years, which is renewable only once; and
3. Disclosure of audit firm fees – the auditor must publish its fees related to the audit of the PIE in the gazettes of the Ministry of Finance.

Audit practitioners must adhere to the Code of Ethics for Professional Accountants.



## Malaysia

Malaysia operates a self-assessment tax system, and tax returns must be filed within seven months of the company’s year-end.

### Auditing and compliance requirements

All companies incorporated in Malaysia must have their accounts audited by a Ministry of Finance approved auditor as mandated by the Companies Act of 2016. These companies are required to, under the Companies Act, keep their accounting books up to date.

Under the Act, private companies were no longer obligated to hold AGMs, and thus the election of auditors, the retirement or election of directors, and the lodgment of audited annual returns are no longer tied to the holding of an AGM and are dealt separately. Public companies are still required to hold an AGM.

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Private exempt companies are not required to file audited accounts; an exempt private company is defined as a private company having not more than 20 members, none of whom are corporations having direct or indirect interest in its shares.

The criteria for audit exemption for certain private companies are:

- The company is dormant – this means the business has no accounting transactions occurring and its operations have halted;
- Zero-revenue companies – these are companies that do not generate any revenue during the current financial year, as well as the past two financial years. Further, its total assets do not exceed 300,000 ringgit (US\$72,100) in the current financial year and the previous two financial years; and
- Threshold-qualified companies – these are companies whose revenues do not exceed 100,000 ringgit (US\$24,000) during the current financial year as well as the previous two financial years. Secondly, total assets of the company do not exceed 300,000 ringgit (US\$72,100) in the current financial year and the previous two financial years, and it ended the current financial year and the previous two financial years with no more than five employees.

However, an exempt private company, which is solvent, may still need to audit its accounts if it receives a written notice from the Ministry of Finance.

The certificate that substitutes the attachment of the audited accounts must either be in Bahasa Malaysia or English. If presented in any other language, a translation must be provided.

## Appointing auditors

During the filing process, companies must use the services of a professional accountant qualified under the Accountants Act 1967, which must confirm that the applicant's statements comply with the approved accounting standards.

## Accounting standards

Companies doing business in Malaysia are required to prepare their financial reports in accordance with the following two sets of reporting standards:

- The Malaysian Financial Reporting Standards (MFRS), designed for companies with public accountability; and
- The Malaysian Private Entities Reporting Standards (MPERS), designed for private companies with annual periods beginning on or after January 1, 2016.

It should be noted that foreign companies listed in Malaysia are able to apply either Malaysian Accounting Standards Board approved accounting standards or acceptable internationally recognized accounting standards. Similarly, Malaysian companies are able to use IFRS in their financial statements if they wish to do so.

## Annual reports

The documents required during an annual audit are similar for both foreign companies operating in Malaysia and Malaysia-incorporated companies. These include the following:

- Director's report;
- Financial statements;
- Principal business activities;
- Statement by directors on the financial statements;
- Total paid-up capital;
- Statutory declaration by the director or officer primarily responsible for financial management; and
- Auditor's report.

## Penalties for non-compliance

For private limited companies, non-compliance in relation to the late submission of financial statements could lead to a fine of up to 2,000 ringgit (US\$478) while the non-submission of audited financial statements could lead to a 30,000 ringgit (US\$7,180) or imprisonment of up to five years.



## Myanmar

The Myanmar Companies Law of 2017 and Myanmar Accountancy Council Law are the main legislation that governs audit and compliance requirements for businesses in the country.

If businesses find conflict between the requirements set out under both laws, then the requirements under the Myanmar Accountancy Council Law will be sufficient.

## Auditing and compliance requirements

Myanmar operates two assessment systems: the self-assessment system (SAS) and the official assessment system (OAS).

If the corporate taxpayer is under the SAS, then they are not required to submit audited financial statements to the Internal Revenue Department (IRD). Corporate taxpayers must submit their audited financial statements to the Directorate of Investment and Company Administration (DICA) and the IRD if they are under the OAS.

Small companies, classified as having less than 30 employees and revenue of less than 50 million kyat (US\$37,000), are not required to submit their financial statements to DICA.

## Annual general meetings

A company is required to hold its first AGM no later than 18 months from the date of incorporation and in subsequent intervals of no more than 15 months. Within 21 days of the AGM, the annual return will need to be filed to the Companies Registration Office.

During an AGM, the following activities will occur:

- Electing directors;
- Appointing auditors;
- Approval of financial statements by shareholders; and
- Approval of the director's report.

## Fiscal periods

The financial year in Myanmar runs from October 1 to September 30. This financial year is mandatory for all businesses, apart from banks, financial service providers, and mobile financial service providers.

In September 2021, the Central Bank of Myanmar (CBM) announced that the fiscal year for banks, financial service providers, and mobile financial service providers would change to April 1 to March 31 starting in 2022, with the period from October 2021 to March 2022 acting as an interim period.

Companies must file any corporate income tax returns and audited financial statements to the IRD.

## Appointing auditors

Companies incorporated in Myanmar must maintain proper books of accounts as well as appoint an auditor by the company's directors. At each AGM, the directors must present the audited financial statements.

A person must hold a certificate from an authorized body entitling them to act as an auditor for companies. All auditors must be either a certified public accountant or hold an accountancy degree in a foreign country recognized by the Myanmar Accountancy Council (MAC).

The following people are prohibited from being appointed as auditors:

- The director or officer of the company;
- A partner of the director or officer;
- Any person indebted to the company; and
- Any person in the employment of the director or officer.



It is the duty of the auditor to state in their report the following:

- Have the books and accounts been maintained in accordance with the law?
- Do the balance sheets represent the true state of financial affairs of the company?
- Was the auditor able to obtain the necessary information from the relevant parties in the company?
- Were the balance sheets drawn up in accordance with the law?

## Accounting standards

Financial statements in Myanmar are prepared in accordance with the Myanmar Accounting Standards (MAS) and the Myanmar Financial Reporting Standards (MFRS), implemented by MAC.

MAC has also implemented the MFRS for SMEs, which is adopted from the IFRS for SMEs standards. Publicly accountable companies must only use the MFRS standards.

Both MAS and the MFRS are based on the IFRS principles, except for the following:

- IFRS 9 – financial instruments;
- IFRS 10 – consolidated financial statements;
- IFRS 11 – joint arrangements;
- IFRS 12 – disclosure of interests in other entities; and
- IFRS 13 – fair value measurement.

## Annual reports

All companies incorporated in Myanmar must file annual returns with the Directorate of Investment and Company Administration (DICA) within two months of incorporation, and at least once annually after. Companies will receive an electronic reminder from DICA when their annual returns are due.

Annual return documents must contain the following information:

- List of directors;
- Capital structure of the company;
- Information on shareholders; and
- The date when the AGM was conducted.

## Penalties for non-requirements

If the taxpayer is late in filing their tax returns, the penalty will be either:

- A fine of five percent of the tax due and an additional one percent of the tax due for each month; or
- Fixed fine of 100,000 kyat (US\$74).

If the taxpayer deliberately provides incorrect information or omits vital information, which results in the underpayment of the tax liability, then the following penalties will apply:

- A 25 percent penalty of the underpaid tax; or
- A 75 percent penalty of the underpaid tax if this amount is less than 100 million kyat (US\$74,000) or not more than 50 percent of the payable tax.



## Philippines

Under the Tax Code, all persons, natural or juridical, who are subject to internal revenue taxes must keep proper records of all business transactions and keep books of their accounts.

## Auditing and compliance requirements

Companies whose gross annual earnings exceed PHP3 million (US\$61,760) are required to have their accounts audited. Companies whose annual sales that do not exceed PHP3 million (US\$61,760) can file their tax returns with unaudited financial statements.

There are several government regulatory bodies who have the power to establish additional reporting requirements. These regulatory bodies are:

- Securities and Exchange Commission (SEC);
- Insurance Commission (IC);
- The Bangko Sentral ng Pilipinas (BSP);
- Professional Regulation Commission (PRC); and
- Professional Regulatory Board of Accountancy (PRBOA).

Regulated entities, such as public utilities, insurance companies, and banks or corporations, are to submit their audited financial statements to their relevant government regulatory agency as well as filing to the SEC.



Further, the Securities Regulation Code (SRC) Rule 68 provides the reporting requirements for the following types of entities:

- Regional operating headquarters of foreign companies with capital of more than PHP1 million (US\$20,088);
- Stock corporations with total assets or liabilities of PHP 600,000 (US\$12,000) or more;
- Non-stock corporations with total assets or liabilities of PHP 600,000 (US\$12,000) or more;
- Branch offices of non-stock foreign corporations with total assets of more than PHP1 million (US\$20,088); and
- Branch offices of stock foreign corporations with total assets of more than PHP1 million (US\$20,088).

## Appointing auditors

All companies must submit their financial statements accompanied by an auditor's report issued by an independent certified public accountant (CPA). The PRC is the government agency responsible for regulating the accounting profession in the country and the PRBOA is responsible for the licensure examination as well as for CPAs to observe the rules implemented in the Philippine Accountancy Law of 2004. The auditor is appointed by the board of directors of the corporation and the SEC requires external auditors to be rotated every five years.

The BSP requires external auditors engaged by banks to be changed every five years and the IC requires insurance companies to also change their external auditor every five years. Once the services of the auditor have been used for these five consecutive years, the same auditor cannot participate in the auditing process for a period of, in most cases, two years.

## Fiscal periods

The Philippines uses a self-assessment tax system, and the accounting period consists of 12 months, normally ending on December 31. Tax returns must be filed on the 15th day of the fourth month following the closing of the taxable year. A company can change its accounting period with prior approval from the Bureau of Internal Revenue (CIR).

## Accounting standards

The Philippine Financial Standards (PFRS) is the most authoritative accounting standards in the country. This applies to all entities with public accountability.

The SRC Rule 68 sets out the applicable framework for the following type of entities:

- For large and publicly accountable entities – The PFRS;
- For SMEs – PFRS for SMEs; and
- Micro-enterprises – PFRS for SMEs or other accounting standards issued after 2004.



Large companies are classified as any of the following criteria:

- Companies with total assets of more than PHP350 million (US\$7 million) or have total liabilities of more than PHP250 million (US\$5 million);
- Companies that in the process of filing financial statements in order to issue class instruments;
- Companies that are required to file financial statements; or
- Holders of secondary licenses from a regulatory agency.

A company is classified as an SME if it meets all of the following criteria:

- Companies with total assets of more than PHP100 million (US\$2 million) to PHP350 million (US\$7 million) or have total liabilities of more than PHP100 million (US\$2 million) to PHP250 million (US\$5 million);
- Are not in the process of filing financial statements in order to issue class instruments; and
- Do not hold secondary licenses from regulatory agencies.

SMEs are obligated to follow the PFRS for SMEs unless they fall under one of the below categories:

- Subsidiary of a parent company who are reporting under the full PFRS;
- Is part of a group that is reporting under full PFRS;
- It is a branch office or regional operating headquarters of a foreign company, also reporting under full PFRS; or
- The company is a subsidiary of a foreign parent company that is planning to implement the IFRS system.

## Annual reports

All companies regardless of their size are required to prepare their documents in any native language from the Philippines, such as Tagalog. Companies must maintain their books of account, which consist of a journal and a ledger (or their equivalents). These records need to be retained for three years although some local governments may require records to be kept for up to five years, and the Philippine Stock Exchange requires dealers in securities to retain their records for six years.

Accounting records must also be kept in Philippine Pesos, or a 'functional currency' used in its operations if approved by the SEC and the BIR.

Companies must maintain a stock and transfers book that must be registered with the SEC; as well as a book of accounts that must be registered with the BIR before use, which consists of the following:

- General ledger;
- General journal;
- Purchase journal;
- Sales journal; and
- Cash receipts/disbursements journal.

The BIR has the power to examine a company's financial records for up to three years from the date of filing.

## Penalties for non-compliance

There is a 25 percent surcharge of the amount of tax due if a company fails to timely file any return plus a 12 percent interest per annum. A 50 percent surcharge of the basic tax due is applied to companies who willfully neglect to file their return or purposefully submit fraudulent returns.



## Singapore

Singapore's transparent business and legal systems have made the island nation a popular destination for international companies to establish their regional headquarters. In maintaining this vibrant business climate, the country's audit and compliance procedures are considerably less burdensome compared with its ASEAN peers.

## Auditing and compliance requirements

According to Singapore's Companies Act, the primary legislation regulating the conduct of companies in the country, companies must comply with annual filing requirements of the Accounting and Corporate Regulatory Agency (ACRA), as well as the Inland Revenue of Singapore (IRAS).

The *Companies Act* states that private limited companies must have their financial statements audited by a qualified public accountant at least once a year.

### Annual general meeting

An annual general meeting (AGM) is obligatory for a Singapore company. The AGM can be held anywhere in the world, whereby the shareholders discuss the following items:

- Approval of the audit reports;
- Re-elect directors (if required);
- Re-appointing auditors;
- Declare dividends; and
- Transact other business.



AGMs are to be held:

- Once every year;
- Within 15 months from the previous AGM; or
- Six months from the FYE date.

## Appointing auditors

Within three months of company incorporation, company directors must appoint an auditor, unless they fall under the following criteria:

- Annual turnover is less than S\$5 million (US\$3,700,00);
- The total number of shareholders is less than 20; and
- All shareholders are individuals and not corporations.

The role of the auditor is to report if the company's financial statements comply with the relevant financial reporting standards and to provide an objective analysis of the company's financial performance. Additionally, only public accountants registered with ACRA can conduct company audits.

## Fiscal year

All companies in Singapore should determine a financial year-end (FYE) (that is, the last day of the company's first financial year) after incorporation.

After the FYE, the company must hold their AGM as well as file their annual returns (AR). Listed companies must file their AR within five months and non-listed companies within seven months.

Many companies choose December 31 for their FYE while others have chosen the end of any quarter (March 31, June 30, and September 30).

In deciding an FYE, companies should consider whether the chosen date affects their eligibility to receive tax incentives. Starting in 2020, qualified new companies can receive a 75 percent tax exemption on the first S\$100,000 (US\$73,000) of chargeable income during the first three consecutive years. There is a 50 percent tax exemption on the next S\$100,000.

For certain companies, it is, therefore, more advantageous to have December 31 as their fiscal year-end date.

## Audit exemptions

In July 2015, ACRA amended the Companies Act through the Small Company Concept. This amended the audit exemption criteria for businesses.



Companies that qualify as 'small' are exempted from having their accounts audited and from appointing an auditor. They first need to fulfil two of the three following criteria:

- Total revenue must not exceed S\$10 million (US\$7.3 million);
- Total assets of the company should not exceed S\$10 million (US\$7.3 million)
- Total number of full-time employees must not exceed 50.

## Group company audits

Holding companies and their subsidiaries can also be exempt from audit compliance if they qualify as a 'small group'. To qualify, the group (comprising of all the companies) should fall under two of the three criteria as written above for small companies.

Businesses that are exempt from audits are advised to prepare annual financial statements.

## Accounting standards

Companies in Singapore that have a financial period starting after January 1, 2003 must use the Singapore Financial Reporting Standards (SFRS), which are based on the IFRS.

Financial statements are prepared under the accrual basis of accounting, which is one of the main principles of the accounting standards in Singapore. Under this accounting method, revenues are recorded when a transaction occurs rather than when the payment is received.

When the International Accounting Standards Board (IASB) issued the IFRS for small entities (SE) in 2009, the Accounting Standards Council of Singapore introduced the SFRS for small entities (SE) in 2010. The SFRS for SE provides an alternative framework to the full SFRS for SEs reporting periods beginning on or after January 1, 2011.

Businesses that are eligible to apply for SFRS for SE are:

- Classified as a small entity, meaning they must also qualify in two of the three aforementioned criteria under audit exemptions, being:
  - » Total revenue of not more than S\$10 million (US\$7.3 million);
  - » Total assets of not more than S\$10 million (US\$7.3 million); or
  - » Total number of employees of not more than 50.
- The company is not publicly accountable; and
- It publishes financial statements for external users.

Some of the advantages for small companies abiding by the SFRS for SE are that the process for preparing a company's financial statements are much simpler, and there is a reduction in the disclosure requirements.

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## Annual reports

Singapore's authorities require companies to submit their estimated chargeable income within three months from the financial year-end. This accounting should include the following:

- Statement of comprehensive income (profit and loss accounting);
- Company details;
- Balance sheet;
- Shareholder details;
- Dates of annual returns and AGM;
- Detail of company officers;
- Cash flow statement; and
- Statement of changes in equity.

## Penalties for non-compliance

Businesses that fail to hold an AGM and are late to file financial statements are at risk of fines, summons, and even an arrest warrant issued by ACRA.

Failing to file tax returns for two years or more will result in a Court summons, and upon conviction, the company will be ordered to pay a penalty that is twice the amount of tax and a fine of up to S\$1,000 (US\$730).

## Thailand

Audit and compliance are outlined in a number of laws in Thailand. These are:

- The Accounting Act of 2000;
- The Securities and Exchange Act of 1992;
- The Bank of Thailand Act B.E. 2485;
- Insurance Commission Act B.E. 2550; and
- Financial Institutions Business Act B.E. 2551.

## Auditing and compliance requirements

All companies, partnerships, joint ventures, and branches of foreign companies must prepare financial statements for their assigned accounting period to the Ministry of Commerce.

Foreign companies (ROs, branch office, regional offices) must submit their financial statements no later than 150 days after the end of the fiscal year. Once an accounting period is chosen, it cannot be changed unless there is written approval obtained from the Revenue Department.

## Annual general meetings

Companies and partnerships must comply with the requirements set out in the Thai Civil and Commercial Code to hold annual general meetings (AGM).

The board of directors must issue a letter to organize the AGM within four months of the end of the fiscal year. The AGM must be held at least once a year. The AGM should have the following agendas:

- To clarify the minutes of the AGM for the previous AGM;
- Approval of the director's report on the company's business activities;
- Acknowledge the company's operational results from the previous year;
- Select new directors to replace those that have been terminated;
- To appoint an auditor and determination of audit fees; and
- To consider dividends.

## Appointing auditors

Financial statements must be examined and certified by an independent certified auditor. The Thai Accounting Professions Act requires all certified public accountants (CPA) to apply the Thai Standards of Auditing. The audit opinion issued by the CPA is required when submitting financial statements and tax returns.

This auditing should be done regardless of whether the company is traded or not. The only exception to this rule is the financial statements of a registered partnership under Thai law, whose total capital, assets, and income are not more than that prescribed in Ministerial Regulations.

## Fiscal year

Thailand operates a self-assessment tax system with the tax year generally set as the 12-month period ending on December 31. A company, however, can choose their own accounting period as long as it does not exceed 12 months.

If a company chooses their own accounting period, they must inform the Director-General of the Revenue Department. Starting from April 2020, financial statements must be filed electronically with the Department of Business Development (DBD) of the Ministry of Commerce.

## Accounting standards

Under Thai law, a company registered in Thailand, irrespective of whether it is a limited company, a foreign company operating in the country, or a partnership, are obligated to keep their accounts and undertake annual audits.



Companies in Thailand should apply the Thai Financial Reporting Standards (TFRS) in the preparation of financial statements. TFRS have made great strides in harmonization with IFRS in recent years.

Currently, SMEs in Thailand are allowed to use one of the two following standards:

- TFRS; and
- Thai Accounting Standard for non-publicly accountable entities (TFRS for NPAEs).

Foreign companies are permitted to use the IFRS system.

Companies listed on the Thailand Stock Exchange must also prepare financial statements which must also be reviewed by Thai auditors on a quarterly basis.

## Annual reports

Limited companies, both public and private, should provide the following documents at the end of each accounting period:

- Company name;
- Type of business;
- Details of directors;
- Audited financial statement;
- Balance sheet;
- Profit and loss accounts;
- List of shareholders, as of the date of the meeting; and
- Minutes of the annual meeting.

For reporting purposes, companies must prepare their documents in the Thai language. While foreign companies may prepare their documents in a language other than Thai, a translation must be attached.

Private and public limited companies must have their financial statements audited at the end of the fiscal year by an independent auditor.

In accordance with the Accounting Act of 2000, businesses are required to retain their books of accounts for at least five years. This may be extended for a period of seven years by the Director-General of the Revenue Department, depending on the business activity.

## Penalties for non-compliance

Failure to comply with these regulations may result in a penalty up to 100,000 baht (US\$3,000).

If a business underestimates its profits for an entire year by more than 25 percent, it is subject to a 20 percent surcharge is imposed. A surcharge of 100 percent in the case of an incorrect filing and 200 percent in the case of failure to file a return. The penalty can be reduced by 50 percent if the taxpayer submits a written request to the tax officer.



## Vietnam

The Accounting Law governs the principles for accounting, audits, and organizational structure, for businesses to stay compliant in Vietnam.

The tax year in Vietnam is determined according to the calendar year, and a Vietnamese-based auditing company must conduct the audit. The financial reports should then be submitted to the local tax authority, Ministry of Finance, and the statistics office 90 days before the end of the fiscal year.

## Auditing and compliance requirements

Investors should be aware that the audit and compliance requirements are different for a foreign-owned enterprise (FOE) and representative office (RO) in Vietnam.

### Annual compliance for foreign-owned companies

FOEs are obligated to provide an annual audit report and the finalization of corporate and personal income taxation.

The statutory audit requirements are as follows:

- Statement of income;
- Statement of financial position (profit and loss);
- Statement of changes in equity, if any; and
- Balance sheets.

Within 90 days after the end of the fiscal year, FOEs need to submit the audited reports to three government agencies:

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- Provincial Department of Planning and Investment (DPI) or the Provincial Level Export Processing and Industrial Zone Department in the case of FOEs based in investment zones (IZs) or export processing zones (EPZs);
  - Provincial level tax departments; and
  - Provincial level statistical offices.

## Fiscal year

The financial period in Vietnam usually coincides with the calendar year. FOEs can choose from four fiscal periods with the 12-month period beginning in the first day of each quarter after registering with the Tax Department.

The financial reports should then be submitted to the local tax authority, Ministry of Finance, and the statistics office before the end of the fiscal year.

The four fiscal periods are:

- January 1 – December 31;
- April 1 – March 31;
- July 1 – June 30; or
- October 1 – September 30.

## Annual compliance for representative offices

Representative offices are one of the simplest and fastest ways to establish a legal entity in Vietnam. Their reporting requirements are also more simplified compared to FOEs.

ROs are forbidden from directly conducting profit-generating activities and are limited to market research, developing trade contacts, and gather information on regulations and laws.

## Accounting standards

In addition to the Accounting Law, local and international companies are obligated to adhere to the Vietnamese Accounting Standards (VAS), which has been developed by the Vietnamese Ministry of Finance, when documenting financial transactions. The VAS provides the guidelines for bookkeeping, financial reporting, and financial statement preparations.

There are industry-specific accounting guidelines for businesses engaging in insurance, securities, as well as funds management.

Foreign investors should be well aware of unique fundamental characteristics of VAS to fully comprehend compliance requirements and make informed investment decisions. Vietnam's government currently has 26 VAS accounting standards based on IFRS.



To provide guidance for local and foreign enterprises in Vietnam on these standards, the Ministry of Finance (MoF) recently issued *Circulars, No. 200/2014/TT-BTC and No. 202/2014/TT-BTC*, which enhance the comparability and transparency of corporate financial statements and bring the two systems closer.

The government aims to replace VAS and adopt the International Financial Reporting Standards (IFRS) by 2025 through a draft IFRS roadmap, published in 2019. The roadmap divides the IFRS implementation into three stages:

**Stage 1 (2019-2021):** The MoF makes necessary preparations for the implementation of the roadmap, such as the publication of the Vietnamese translation of IFRS standards, training and the preparation of guidelines for IFRS implementation. Companies that will adopt IFRS from 2022 onwards will receive special support.

**Stage 2 (2022-2025):** The MoF selects certain pilot companies, in particular state-owned enterprises, listed companies, and (large) non-listed companies, to implement IFRS in practice. Foreign companies can adopt IFRS for their individual financial statements on a voluntary basis.

**Stage 3 (from 2025):** IFRS will be mandatory for the consolidated accounts of all state-owned companies, listed companies, and (large) non-listed companies. All other companies can adopt IFRS for their individual financial statements on a voluntary basis.

## Annual reports

Enterprises under foreign ownership must have their financial statements audited by an independent audit firm operating in Vietnam. Such statutory audits are performed in accordance with VAS and every organization is required to have a Chief Accountant, as annual financial statements must be approved by the chief accountant and the legal representative.

The company should sign with the independent auditing company no later than 30 days before the end of the fiscal year, with the company also being responsible for providing accurate and adequate information to the auditors. If the company is a credit institution, they are required to rotate their audit firms every five years, whereas non-credit institutions have to change their auditors every three years.

The accounting records should be maintained in the Vietnamese language although this can be combined with another commonly used foreign language, such as English.

Additionally, the Vietnamese Dong must be used as the accounting currency, however, entities that receive and pay with foreign currency can select that said foreign currency in their accounting records and financial statements. For statutory reporting, the foreign currency must be converted to the Vietnamese Dong equivalent.



For ROs, the annual reports must include:

- Basic information – contact information, such as office address, telephone numbers, and primary bank contacts. Investors should note that the address should match to that written in the RO license;
- Human resource report – ROs must document their policies with regards to salaries, bonuses, insurance, and other benefits. The personal information and position of every employee should also be included; and
- Activities report – ROs must document their activities for the preceding year, which includes information, such as market research activities, advertising activities, participation in trade fairs, and the promotion of service agreements, among others.

## Penalties for non-compliance

Under the government's New Penal Code, which was issued in 2018, businesses that fail to adhere to the compliance laws can now be held criminally responsible.

If the tax authorities find discrepancies in the financial reports, after an audit, a 20 percent tax will be imposed on the amount that is under-declared. There is also a 0.03 percent daily interest rate for the late payment of tax.

In addition, tax authorities can penalize companies for VAS non-compliance through the disallowance of input VAT credits and withdrawal of CIT incentives.



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