

# Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia



## c o n t e n t s

### 1 Covid-19 and Government Procurement

The Thai government declares COVID-19 a force majeure event for public procurement contracts.

### 2 Force Majeure in Thailand

Relying on COVID-19 to excuse contractual performance isn't as straightforward as some may hope.

### 4 Thailand's Patent Act Amendments

A summary of the proposed substantial amendments to Thailand's patent and industrial design legislation.

### 5 Counterfeit Destruction Ceremony

Thailand holds its first online destruction ceremony due to health and logistical concerns.

### 6 Domain Name Distinctiveness

Rulings in the U.S. and Thailand may increase the viability of .com trademarks.

### 7 Bad-Faith Trademark Registration

Canceling an illegitimately registered trademark in Thailand can be tricky; especially if they have been held for a long time.

### 10 New Vietnam Healthcare Decree

Penalties for some violators are sharply increased in light of the COVID-19 pandemic.

### 11 Thailand's New Digital Personal Loans

The Bank of Thailand introduces new low-value loans with simpler documentary requirements.

### 12 Updates to Thailand's Anti-Money Laundering Law

New legislation updates Thailand's anti-money laundering legislation to better fight modern practices.

### 13 Cambodia's New Anti-Money Laundering Law

A new law targeting money laundering and financing of terrorism further bolsters Cambodia's image as a reliable business destination.

### 15 Tilleke & Gibbins Updates

The firm received record rankings across all practices in *Asialaw Profiles 2021* and *IFLR 2021*, and an Asia-wide Firm of the Year award at the Benchmark Litigation Awards.

## Thailand's COVID-19 Relief Measures for Government Procurement Contracts

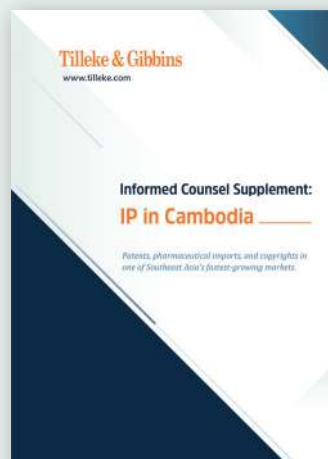
Left | Charunun Sathitsuksomboon – Partner – charunun.s@tilleke.com  
Right | Thammapas Chanpanich – Attorney-at-Law – thammapas.c@tilleke.com



With virtually all business operations in Thailand affected by the fallout of the COVID-19 pandemic, the government has been keen to provide relief measures to limit the economic damage. In addition to implementing broad economic relief, this has also meant changes to the government's own internal operations, and in recent months, the Public Procurement and Supplies Administration Ruling Committee has issued two circular letters prescribing guidelines on how government authorities should handle their procurement operations during this period. The circulars, which were issued under the Public Procurement and Supplies Administration Act B.E. 2560 (2017), detail the relief measures for government procurement contracts that cannot be fulfilled because of the disruptive effects of the COVID-19 pandemic.

Most significantly, the circulars clarify that the impact of COVID-19 should be deemed *force majeure* under government procurement contracts and government procurement law, which affects the penalties levied on contractors for late performance of required duties under government procurement contracts. The Ruling Committee specified the start of the *force majeure* period as March 26, 2020 (the date when the government first announced a nationwide state of emergency). This official designation enables contractors to cite disruption from COVID-19 when requesting additional time to perform their duties under a contract, or exemption from or reduction of penalties incurred due to the delay.

*Continued on page 2*



Tilleke & Gibbins' guide to Cambodia's fast-developing patent, pharmaceutical, and copyright systems—the first such guide of its kind, and an essential read for those in innovative industries.

[Click here to see more.](#)

## Relief for Government Contractors (from page 1)

For contracts that have not yet reached their maturity date, the Ruling Committee granted relief measures by directing the relevant government authorities to count the number of days that COVID-19 has affected performance of the contract, and use this number as the basis for determining an extension of the timeframe for performing the contractual duties. For contracts that have already reached their maturity date, the contractual party that failed to perform according to the contract would normally be subject to an assessed fine for their non-performance. In these cases, the relevant authorities are to likewise count the days that performance was affected by COVID-19, and exempt or reduce the fine for the contractual party accordingly.

The days to be counted in the above scenarios are defined as “the number of days of the actual occurrence”—that is, the number of days for which COVID-19 and related measures actually impacted performance. These will be considered by the government authority based on the government’s various pandemic-related regulations and restrictions, such as closure orders, prohibitions on certain activities or movements, and other relevant orders up until the date on which the business re-opened, resumed business operations, or resumed normal operations (whichever is most appropriate for performance of the obligation in question).

When a *force majeure* event obstructs contractual performance under a standard procurement contract in Thailand, the private party must notify the relevant government party of the delay, within 15 days of the end of the *force majeure* situation, in order to request an extension of the timeframe for contractual performance, or a reduction

or exemption of the fines incurred. In the present situation, however, the *force majeure* event is still taking place, and it is not yet known when the situation will end. Therefore, the Ruling Committee has ruled that, instead of following these requirements, the contracting party must notify the government authority about COVID-19’s impact on the project, regardless of whether or not that impact has ended, and provide documentary evidence demonstrating that the contracting party was affected by the COVID-19 pandemic. Examples of this documentation could include the government’s announcement of the state of emergency due to COVID-19, closures or other limitations issued by the government agencies, or evidence showing that suppliers cancelled their production runs.

In addition to the above relief measures, the Ruling Committee has provided options for cases in which a procurement contract has not been fully executed because of a problem in the delivery or investigation of the relevant products or services. This could occur, for instance, when a contracting private party may have performed the actions required by the contract, but disruptions from COVID-19 intervened before the contracting government agency was able to investigate the products or services in order to ensure that the work had been appropriately completed.

The various relief measures that have been issued by the Public Procurement and Supplies Administration Ruling Committee in the last six months provide a number of helpful options for businesses whose involvement in government procurement has been negatively affected by the COVID-19 pandemic. By taking advantage of the alternatives outlined by the committee, and by working in concert with the relevant government agencies, businesses can mitigate their losses and delays due to the global disruption and chart a course back to profitability. 🚀



Left | **Noppramart Thammateeradaycho** – Counsel – [noppramart.t@tilleke.com](mailto:noppramart.t@tilleke.com)

Center | **Michael Ramirez** – Counsel – [michael.r@tilleke.com](mailto:michael.r@tilleke.com)

Right | **Pathanin Sornchangwat** – Attorney-at-Law – [pathanin.s@tilleke.com](mailto:pathanin.s@tilleke.com)

## Impact of COVID-19 on Commercial Contracts in Thailand: Force Majeure

COVID-19 has had an economic impact across a wide range of industries, including hospitality, airlines, automotive, construction, logistics, and more, and many performance obligations on contractual parties have been rendered impossible. However, many others—while certainly more difficult, complicated, or expensive—remain literally or legally possible.

While COVID-19 will continue to have a devastating impact on health and economies globally, governments—including Thailand’s—have implemented preventive and responsive measures in an attempt to mitigate that impact. On May 24, 2020, for example, the Committee for Government Procurement and Supplies Management circulated guidelines for the administration of contracts

between private parties during the COVID-19 pandemic, announcing that the COVID-19 pandemic qualifies as a *force majeure* event. The specific period of *force majeure* in Thailand began with the government’s announcement of a state of emergency on March 26, 2020. See the previous article for more details on this measure.

As market circumstances continue to evolve along with the impact of COVID-19, companies in Thailand are paying special attention to the role *force majeure* plays in navigating the various legal implications of commercial contracts during the outbreak.

### Force Majeure Clauses under Thai Law

In the midst of the COVID-19 pandemic many are wondering whether parties will be excused from performance under the doctrine of *force majeure*, by which parties can be excused from contractual performance that becomes impossible due to an extraordinary or exogenous event.

*Continued on page 3*