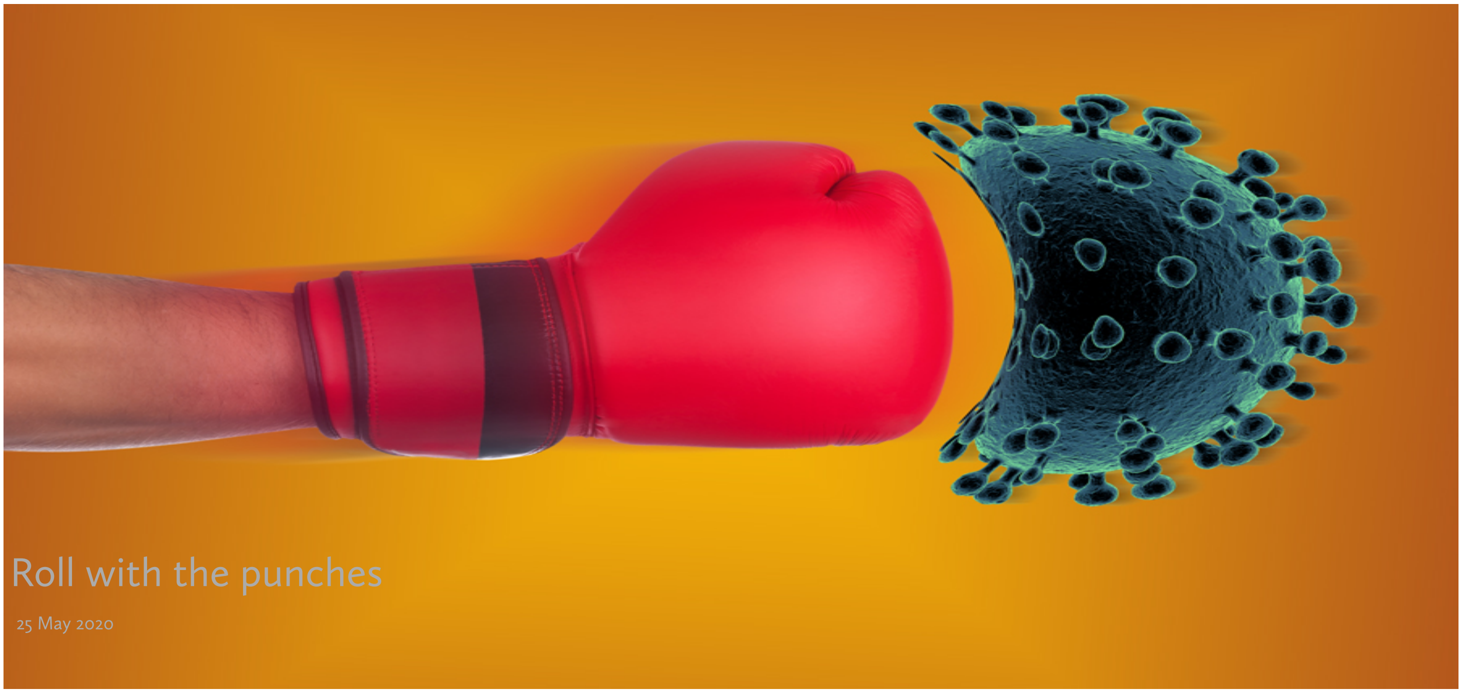

Roll with the punches

25 May 2020

With COVID-19 raging across the region, governments are trying to avoid knockout blows for their territories as they counter with life or death policy moves and decisions affecting business survival

The COVID-19 pandemic has forced governments across the world to resort to strict lockdowns to prevent the spread of the virus, which, in turn, has brought their economies to a standstill. This has presented a twin challenge to governments, central banks and other regulatory bodies – a health emergency coupled with an economic crisis.

Given the unprecedented nature of the crisis, policymakers have resorted to a variety of scal and policy measures and, without the luxury of being able to resort to a tried and tested emergency playbook, a lot of the measures taken have been unorthodox, and their impacts difficult to predict.

While some measures are ad-hoc, some may be here to stay. Making sense of the policy changes by various governments is a challenge in itself, especially for businesses that operate across markets.

Unprecedented policies coupled with the peculiar nature of the crisis make the way forward a tightrope walk for governments in both developed and developing economies.

“It is a balancing of interests,” says Rafael Morales, the managing partner of leading Filipino law rm Morales & Justiniano. “The major challenge is to revive the economy by reopening business establishments, without unduly negating or diminishing the benefits from the community quarantine or lockdown, which so far has minimized the spread of the disease,” he says.

This is a challenge for even the most developed economies in the region, such as Japan. “As probably similar for most industrialized countries, the major challenge is in keeping the economy afloat while at the same time ensuring that the spread of COVID-19 is adequately contained, and the health services are not overwhelmed,” says Lars Markert, foreign law partner with Nishimura and Asahi in Tokyo.

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LARS MARKERT
Foreign law partner
Nishimura and Asahi

John Kim, a partner at Lee & Ko in Seoul, notes: “The South Korea government is ghting a daily battle to maintain a balanced policy approach that prioritizes public safety while remaining mindful of the need for economic recovery.

“Although this approach is not a zero-sum game, as we are seeing in countries all over the world, embracing our better angels and ghting back our worst fears during this pandemic is easier said than done.”

With most economies facing shrinking GDPs, the immediate responses of governments has been to pump-prime their economies with scal stimulus measures such as putting money in the hands of their citizens and businesses.

Almost all countries have announced forms of cash transfers to spur economic activity, stem the shortfall in revenue and income that businesses and individuals are facing, and deter mass layoffs.

THE ‘NEW NORMAL’

Governments in the more advanced economies in the Asia-Pacific have stepped in with cash handouts to citizens and proposals to support struggling businesses.

Singapore was among the rst countries in the region to announce a stimulus plan, introducing various initiatives to provide nancial support for businesses and individuals in three separate tranches – named the unity, solidarity and resilience budgets – committing a total of about S$60 billion (US$42 billion), roughly 12% the city-state’s GDP.

The initiatives include tax rebates, credit nancing, business grants, wage and training support, cash pay-outs, and the establishment of funds such as the temporary relief fund, the COVID-19 support grant and the courage fund for individuals and families.

Hong Kong’s government matched up to its regional rival with generous stimulus measures that add up to about 10% of the special administrative region of China’s economy, with an outlay of about HK$287.5 billion (US$37 billion) in pandemic-related aid, as well as a HK$30 billion anti-epidemic fund. Hong Kong also announced HK$10,000 handouts to all Hong Kong permanent residents above the age of 18 years.

Japan announced a record stimulus of ¥117 trillion (US$1.09 trillion) in spending to tide over the impact of the pandemic, of which about ¥34 trillion will be direct spending by the central government – so-called "fresh water". Part of this money is used for subsidy programmes and nancing through loans and guarantees, for small and medium-sized enterprises (SMEs), individual business operators and freelancers affected by the pandemic.

"The Japan government's stimulus package, which includes two face masks per household and a universal cash handout of ¥100,000 per individual in Japan, has received mixed reactions, partly for the delays in the actual rollout," says Markert, of Nishimura & Asahi.

"Apart from nancial stimulus packages, remote working is being encouraged – which is more of a novelty in a nation that previously required a personal presence at the office," he says. "Interestingly, Japan's tradition to conduct business via seals instead of signatures has been hampering remote working, and there now is debate on whether this aspect should be reformed as well.

The impact on industry is yet to be seen. "Japan's measures have been less strict than in many other industrialized countries," adds Markert. "This may have left the economy in comparatively better shape, hopefully in the long run leading to fewer fee pressures on law rms.

"Japan is one of the countries that has fared comparatively well in the pandemic, and it is not sure that different reactions would have significantly improved the situation."

South Korea, meanwhile, has been among the most successful countries in ghting the spread of the virus. Despite its success in controlling the pandemic, the fate of its economy isn't much different from others in the region, because, as Michael Kim, the co-founder of Kobre & Kim, points out, "Korea is heavily dependent on commerce with foreign nations. The travel restrictions and weak economies in many other countries will present challenges for the Korean economy."

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MICHAEL KIM
Founder
Kobre & Kim

South Korea unveiled a stimulus worth about US$200 to keep the economy steady. "E orts to lower travel and trade barriers among countries that have the virus under control, like China, will help Korea economically," says Kim. "Programmes to give our money to citizens, funded of course by taxation on those same citizens, are more political measures than true economic stimulus, like in other countries that have implemented the same.

"I think the South Korean government has done an excellent job addressing the virus situation. Key will be to continue to persuade other countries to open up their borders further to persons and goods from Korea."

Steven Li, senior foreign counsel with boutique rm Orne Haneul, agrees with Kim that the "South Korea government has been doing quite well on dealing with COVID-19, and many of the measures have brought positive effects to the economy, for now".

"The government has revised some of the regulations regarding infectious diseases and quarantine in the hope of controlling the pandemic more effectively," says Li. "Some of the stimulus measures South Korea has taken for the economy so far include: Lowering the interest rate; providing nancial support to small and mid-sized business entities; and giving out emergency funds to almost every single citizen."

Indonesia, on the other hand, has the opposite of South Korea's problems. The country was badly hit by the pandemic, and, as a largely inbound investment-driven economy, it has faced the brunt of problems not just at home, but in its investee countries.

"Indonesian markets are driven more by inbound investment, and the impact of coronavirus in major economies such as Japan, Singapore, the US and China has immediately affected the markets here, although the degrees may be different from one business sector to another," says Luky Walalangi, the managing partner of Walalangi & Partners in Jakarta.

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LUKY WALALANGI
Managing partner
Walalangi & Partners

The start-up sector in the country, which had been a key driver of growth, was seriously impacted, with investment and funding into the sector drying up, says Walalangi.

Indonesia's nancial services authority (Otoritas Jasa Keuangan, or OJK) issued regulations to push the banking industries' intermediary function, stabilize the nancial system, and support the nation's economic growth amid the pandemic by providing more room for banks to manage their credit risks and non-performing loans, and provide debtors with the possibility of getting some nancial relief.

The OJK announced a reduction in corporate income tax rates from 25% to 22% for the 2020 and 2021 tax years, and 20% for 2022. It also announced a six-month extension for exercising rights and fulfilling tax obligations, including the submission of objections, requests for the return of tax overpayments, requests for the reduction or elimination of administrative sanctions, as well as exemption or relief from import duties.

Malaysia has announced measures valued at MYR250 billion (US$57.35 billion) in April, in addition to a US$4.8 billion stimulus package in March. The April measures are focused on enhancing the existing financing facilities issued in the first stimulus package. It also aims to support businesses, especially SMEs, assist low and middle-income households, and provide fiscal injections to strengthen the national economy.

As part of efforts to stabilize the economy in the medium-term, the government will also inject MYR25 billion into the economy, with MYR2 billion allocated to domestic small-scale infrastructure projects.

There will be cash handouts totalling MYR10 billion for the bottom 40% and the middle 40% of income families. Malaysia divides its society into 40-40-20 on the basis of their income, based on the Department of Statistics' Household Income and Basic Amenities survey.

In the Philippines, the government has placed the entire nation in a state of national emergency in response to the spread of the pandemic. It has announced several steps to address the problems, the most notable being the Bayanihan to Heal as One Act.

"This law authorized the president to adopt several emergency measures, which include additional financial support to public health workers, and emergency subsidies to 18 million low-income households," says Nilo Divina, managing partner at Divina Law in Manila.

"It also authorized the president to: (1) undertake the procurement of the necessary goods and services as exemptions from the existing procurement law; (2) move statutory deadlines and timelines for the filing and submission of documents, payment of taxes, fees and other charges, and the grant of any benefit; and (3) direct public and private financial institutions to implement a minimum of a 30-day grace period of all loans falling due within the period of enhanced community quarantine, without incurring penalties, fees or charges.

"The Department of Trade and Industry also announced that SB Corporation, an agency under it, is setting up a PHP1 billion (US$19.7 million) enterprise rehabilitation financing facility which will be implemented once the community quarantine declaration is lifted," notes Divina. "Micro enterprises with asset size of not more than PHP3 million may borrow PHP10,000 to PHP200,000, and small enterprises with asset size of not more than P10 million may borrow a higher loan amount that will not exceed PHP500,000. The loan shall be used to help the enterprise stabilize or recover from its losses due to COVID-19."

Aris Gulapa, co-founder of Gulapa Law in Manila, adds that the Bayanihan to Heal as One Act also has provisions for the president to ensure the availability of credit to productive sectors of the economy by lowering the interest rates and requirements of lending institutions, and liberalizing the president's authority to grant incentives for the manufacture or importation of much-needed equipment or supplies.

"The Department of Finance, together with the state-run social insurance programme, Social Security System, launched the Small Business Wage Subsidy Programme (SBWS), which provides a wage subsidy of PHP5,000 to PHP8,000 to all affected workers of small business employers who failed to receive the cash assistance under the earlier one-time assistance. The SBWS has benefited more than 2.1 million affected workers," he adds.

In Thailand, the government and governmental authorities have introduced several measures including emergency loans and soft loans for businesses and individuals, a reduction in the rate of withholding taxes, additional grounds for tax deductions, extension of time for tax filings, an acceleration of VAT refunds for exporters, and cash pay-outs.

"Apart from the extension in filing of both corporate and personal income tax, special tax treatment for businesses that were ordered to close by the government, such as shopping malls, and VAT filings, the government has allowed small businesses (with less than 200 employees and less than THB500 million [US$15.6million] in taxable income) that have taken out low-interest loans to claim a tax deduction of 1.5 times the interest expense paid from 1 April 2020 to December 2020," Veeranuch Thammavaranucupt, a senior partner at Weerawong Chinnavat & Partners in Bangkok.

"Companies that do not lay off employees can claim a tax deduction of three times the wage expenses paid from April 2020 to July 2020 and deductions," she says. "It has also reduced the withholding tax rate to 1.5% for payments made from 1 April to 30 September 2020, while the tax rate from 1 October 2020 to 31 December 2021 will be reduced to 2% for those who file through the e-withholding tax filing method."

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VEERANUCH THAMMAVARANUCUPT
Senior partner
Weerawong Chinnavat & Partners

One of the biggest success stories in the fight against COVID-19 has been Vietnam, which has done a tremendous job in containing the spread of the virus despite its limited means.

Michael Lee, a partner at Dilinh Legal in Ho Chi Minh City, says: "There have been minimal stimulus measures. Vietnam did act very swiftly and promptly on banning inbound air travel from epidemic regions and placing cities on lockdown. These measures helped minimize the spread of the pandemic."

Some of the relief measures introduced by the Vietnamese government include: an increase in the interest deductibility cap, from the current 20% to a proposed 30% of earnings before interest, tax, depreciation and amortization (EBITDA); a reduction in policy rates by 0.25 to 1 percentage point; and measures to encourage banks to provide lower interest rates for businesses affected by COVID-19.

The government has also proposed the suspension of payments of social insurance for those who are affected by the pandemic until the end of June, or, if the pandemic hasn't been brought under control by then, until December 2020, without interest charges for late payment, as well as an extension in the deadlines for paying VAT, personal income tax and land rental for taxpayers that are identified as being part of "vulnerable" groups.

THE HURDLES

While these are much needed steps from governments, most people lament that relief measures are often inadequate, delayed and misallocated.

Talking about the Thai government's stimulus measures, Thammavaranucupt of Weerawong Chinnavat & Partners points out: "The government is currently focused on employees. Private sector companies and medium-sized businesses do not have access to the government's rescue plan. It should also focus on private sectors and medium-sized operators, providing them with access to loans. The government needs to synchronize with commercial banks in granting loans, as banks are afraid that the loans may turn into non-performing assets. They are reluctant to grant loans anyway," she adds.

The Japanese government also been criticized for its delay in announcing relief measures. "The central government was initially criticized for not having reacted swiftly and decisively, with suspicions raised that this might be driven by a desire to maintain the original dates for the Olympics," says Markert of Nishimura & Asahi.

"The postponement of the Olympics was certainly a blow for a nation that has been working diligently on improving its hospitality infrastructure for years, and had been looking forward to receiving millions of foreign visitors."

Tetsuo Kurita, a Singapore-based partner at OneAsia Legal, which serves Japanese clients, says: "Compared to other countries, the subsidy from the [Japanese] government is not enough. Therefore, many SMEs are facing financial difficulties."

"The government has to also consider implementing an e-litigation framework and online platform, especially for government and courts," he says, adding that Japanese business is still heavily reliant on physical stamps and paper.

"It is also sometimes lamented that the Japanese central government has no authority to implement a strict lockdown, and that the powers of regional governors make central co-ordination difficult. However, the Japanese populace seems to be sufficiently disciplined and co-ordinated so that these particularities have not constituted real shortcomings."

The limitations that central governments have in enforcing relief measures and lockdown norms is a complaint that is raised by lawyers in Indonesia as well.

"Each region has its own government and the regional governments have authority over a large number of issues," notes Walalangi. "This is an unprecedented situation for the central government, and there is a lot of trial and error, and the regional governments, which have focused on providing groceries and essentials to the lower-income families are facing some difficulties in meeting full expectations of all people, given lack of precedence of similar cases," he says.

"One important policy that we have not really seen from the central government is an incentive for companies not to terminate their employees during these challenging times, which I believe should be one of the government's top priorities right now. Walalangi also believes that cuts in tax rates, while welcome, are too little, and need to be increased.

"Policies for lockdown and reopening of business are unclear, and therefore there is a huge uncertainty for us to do business as usual," says Pramudya Oktavinanda, managing partner at UMBRA Strategic Legal Solutions in Jakarta.

“Without a strict protocol and clear rules on liability, opening business and stores will put a heavy burden of legal risk on Indonesian business players,” says Oktavinanda. “Moreover, I am not sure if we could see any significant increase in demand if people are afraid of leaving their houses.

“Ideally, the rules should also provide release of liability for any companies that have implemented such protocols in a situation where their employees and/or customers are exposed to the virus. Without clear guidelines, there is a huge risk of future disputes, and these must be avoided to support our economic growth.”

The Philippines, meanwhile, has deeper and systemic concerns. “The Philippines is not prepared for this pandemic,” says Gulapa of Gulapa Law. “First, it lacks adequate and efficient healthcare facilities and materials necessary to combat the much-dreaded virus. The country has a limited number of functioning hospitals, testing facilities and accredited health workers, which make COVID-19 testing and treatment a struggle.

“Second, there is difficulty in implementing standard health protocols such as home quarantine, lockdown and social distancing, which can be attributed to the country’s high population density, difficult living situations, and lack of adequate resources,” he says.

“As a consequence of the community quarantine in the Philippines, and the resulting restrictions in production and supply, multiple businesses, especially small and medium-scale enterprises, have been greatly affected.”

Divina, of Divina Law, raises similar concerns about the country’s long-term ability to bring the pandemic under control. “First is the difficulty in carrying out the conduct of mass testing, which is part of the approach of almost all countries that are relatively successful in their COVID-19 strategy, and in effectively implementing contact tracing,” he says.

“Second is the lack of effective means to implement social distancing measures in some areas, particularly in the densely populated areas (e.g., popular public markets and busy inner streets) of metro Manila, making observance of the measures dependent purely on social collectivism and civic-mindedness.

“Third, as the country relaxes its community quarantine measures, implementing the ’new normal’ in workplaces, or in terms of public transportation, or in management of urban areas, or continuation of business operations, among many others, also give rise to additional myriad legal and administrative issues.”

In South Korea, Li, of Orne Haneul, points out: “According to the data published by the Statistics Office, the unemployment rate in South Korea has only increased by less than 1% during the first four months of 2020, but I think the rate will increase during the next couple of months.

“The government should be cautious about it, and take preventive measures to ensure the stability of the employment market, which of course is closely related to the national economy,” says Li. “However, the impact of the pandemic to the economy is inevitable, both domestically and globally.”

Kim, of Lee & Ko, says South Korea has often called on its major conglomerates to act as guiding lights during dark economic times. “In addition to this private sector responsibility, the South Korean government announced plans last week to create over 1.5 million public sector jobs and encouraged the creation of at least 500,000 jobs for young people struggling to find employment in these challenging times,” he says.

“With limited time to react, our defensive instincts and real-world fears can often decimate local businesses and hurt small business owners that are already struggling to operate on skeleton teams … some current projections indicate that approximately 80% of international small business owners will be unable to survive in the next six months without government assistance."

South Korea government has been doing quite well on dealing with COVID-19, and many of the measures have brought positive effects to the economy, for now

STEVEN LI
Senior foreign counsel
Orne Haneul

LOOKING FORWARD

Even as people, governments, businesses and lawyers come to terms with the pandemic and learn to live with all the changes it has brought about, there is the looming threat of a so-called second wave of the virus.

While the steps taken by governments may help tame the pandemic and steady their economies, many are wary that they may be underprepared if they have to deal with another round of the pandemic.

"A major challenge South Korea is facing currently is the second outbreak of COVID-19, some people get infected every day, meaning that there still exists the potential risk of an outbreak, because COVID-19 could easily spread across the country very quickly, starting from a single infected person," says Li.

"The government will still need to fight against COVID-19, at least for the rest of this year, on one hand, and on the other hand, it may need to deal with the side effects brought due to the unprecedented measures taken for the economy in the long run," he adds.

Kurita, of OneAsia Legal, also warns that, "though the number of COVID-19 positive patients is decreasing [in Japan], we have to prepare for a second wave, probably coming this autumn and winter season."

"I think mass testing is crucial," says Divina. "The relative success of some East Asian democracies, like Taiwan and South Korea, in implementing a COVID-19 strategy, is attributed to mass testing. With limited health facilities and resources, and without mass testing, the country will always be second-guessing whether it is flattening the curve or not."

Lee, of Dilinh Legal, also makes a case for the need for COVID-19 testing to be available more readily. “Presently, there is no free government testing, and even paid testing is challenging to obtain,” he notes.

SILVER LININGS

Whether there is another wave of the pandemic or not, businesses and employees are looking at new ways of conducting business.

“The pandemic should be able to open the eyes of many key industry players that we can still be productive from home,” says Oktavinanda.

“This is especially true for the service industry, where the types of services can mostly be delivered online (like legal, accounting, management consultancies, and IT),” he says. “A lot of unnecessary meetings and travel time can be saved by online meeting measures, and apparently online shopping is also quite good, especially for groceries and food. I hope that these more efficient shifts can be maintained in a post-pandemic world.”

Markert, of Nishimura, concurs. “One change will probably come in terms of work style – the forced period of teleworking has shown that firms can deal with matters without everybody present at the office all the time,” he says. “Also, clients – who previously insisted on regular in-person meetings with their lawyers – might have become more used to discussing their cases remotely.”

Markert says the strong reliance on IT is definitely notable in his own area of practice, international arbitration. “In-person arbitration conferences have moved to webinars, and the community was quick to adjust to the new situation by introducing a plethora of protocols and guidelines for virtual arbitration hearings,” he says. “In fact, I will be chairing a three-day virtual hearing with participants conferencing in from six different jurisdictions later this week.”