

COVID-19 AND THAILAND (PART 1) – KEY LEGAL ISSUES TO CONSIDER

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This is the first of two articles on coronavirus (COVID-19) and the implications here in Thailand. In this issue, we consider some of the key legal issues arising out of the measures and restrictions being put in place to respond to and control the spread of coronavirus, given that these are in place until 30 April 2020 at the earliest. As further restrictions may be introduced at short notice, it is important to remain updated on all national, metropolitan and provincial government announcements, orders, notices and regulations.

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REGULATION 1 OF 25 MARCH 2020

Regulation 1 issued on 25 March 2020 by the national government is the primary basis on which business operations are being restricted and governed. Regulation 1 came to force on 26 March 2020 and will remain in force until 30 April 2020. It was issued pursuant to s. 9 of the Emergency Decree on Public Administration in Emergency Situations (2005) (the "Emergency Decree").

This includes the restrictions on business operations and closures set out below, as well as the power to restrict access into and departure from Thailand. These regulations are in force and only foreigners with a work permit or those coming to Thailand to provide medical services or support can now enter the country.

THE COMMUNICABLE DISEASES ACT

As COVID-19 has been declared a dangerous communicable disease under the Communicable Diseases Act (the "CDA"), the governor of the Bangkok Metropolis and each provincial governor is authorised by s. 35 of the CDA to issue orders for the temporary closure of venues. The most significant restrictions are in Bangkok and, shortly Phuket, but each province is now imposing its own restrictions and there are increasing numbers of checkpoints on provincial borders. As the rate of infections outside Bangkok continues to increase, further restrictions on operations and movement are likely.

WHICH ONE TAKES PRECEDENCE?

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The powers pursuant to the CDA are subject and subordinate to the powers of the Prime Minister under the Emergency Decree and the orders to be made by the governors of Bangkok and the provinces must comply with and be consistent with the terms of the Emergency Decree and regulations made pursuant to it. As a result, although the governors can order the closure of *'market places, cooking or food selling places, beverage producing or selling places [and] factories'*, they have not done so because these would fall within the businesses which are subject to Regulation 1 orders to remain open. As a result, *factories* and *'beverage producing....places'*, to the extent they are factories, must remain open under Regulation 1. For the remaining businesses listed in category B, as they are also subject to Regulation 1, they can remain open subject to the restrictions in Regulation 1.

The following venues are closed until further notice pursuant to s. 35 of the CDA

1. Applies nationwide:

- Boxing stadia, sports stadia, playgrounds, race tracks or premises operating racing events.

2. Applies only to Bangkok and Metropolitan area:

- Pubs, premises operating entertainment halls, theatres, premises operating performance shows or recreational activities, premises operating massage parlours, premises operating Thai massage, spa, fitness and premises operating entertainment venue.

3. Applies nationally: closed without appropriate screening measures and compliance with Regulation 1:

- Natural sightseeing spots, museums, public libraries, places of worship, bus stations, markets and shopping malls.

Under Regulation 1, the following venues can open but with restrictions

1. A premise or place which can be partially open in A3; and

2. A premise temporarily closed by provincial governors, varying from province to province. This applies primarily to the closures of venues in the provinces adjacent to Bangkok from 28 March 2020 to 30 April 2020.

For Bangkok, the order from the governor dated 27 March 2020 closed the following from 28 March 2020 to 30 April 2020:

"Restaurants can only open to provide takeaway and delivery services."

1) Restaurants including food or beverage shops located in tents, food shops on push carts or food stalls (except restaurants in sanatoria or in hotels which provide food or beverages only for hotel guests or airport restaurants) Restaurants can only open to provide takeaway and delivery services;

2) Shopping malls including shopping centres and community malls except supermarkets, pharmacies, shops selling essential goods for living and takeaway food shops and areas in the shopping malls where banks are located;

- 3) Areas for food consumption in convenience stores;
- 4) Markets can open only for the sale of pet food, take away fresh, dry and ready-to-eat food, medicines and medical supplies, fresh flowers and essential goods for living;
- 5) Beauty salons or hair salons;
- 6) Tattoo shops or body piercing shops;
- 7) Premises operating skating or roller blading or equivalent;
- 8) Amusement parks or bowling alleys or game centres;
- 9) Game shops or internet cafés;
- 10) Golf courses or premises operating golf training;
- 11) Swimming pools or equivalent;
- 12) Premises operating cockfighting or cockfighting training;
- 13) Premises selling amulets;
- 14) Goods exhibition centres, convention centers and exhibition centers;
- 15) Educational institutes and tutorial centres;
- 16) Businesses operating weight training, beauty clinics and beauty salons;
- 17) Businesses operating spa, massage for health or beauty purposes;
- 18) Businesses operating pet spa, pet showering, pet grooming or pet care services;
- 19) Businesses operating massage parlour;
- 20) Businesses operating showering, sauna and herbal steam;
- 21) Businesses operating as theatres (cinema, live theatre);
- 22) Businesses operating business of providing a place for exercise;
- 23) Businesses operating entertainment halls and equivalent;

- 24) Boxing stadia and boxing gyms;
- 25) Sports stadia;
- 26) Race tracks;
- 27) Premises operating racing events;
- 28) Playgrounds;
- 29) Premises operating performance shows or recreational activities;
- 30) Museums;
- 31) Public libraries;
- 32) Meeting rooms or banquet rooms in hotels;
- 33) Premises operating business of providing a place for playing pools or billiards; and
- 34) Public and private nurseries from 31 March, except nurseries in hospitals.

"Although these have not been declared essential businesses, as has happened in other countries, they should generally be treated as essential."

Under Regulation 1, the following premises operating the following business must remain open

Operators of the following businesses are required to comply with the disease prevention measures under the Emergency Decree. Although these have not been declared essential businesses, as has happened in other countries, they should generally be treated as essential. Other than the businesses listed in A1 and A2 and those closed in Bangkok as set out in B above, all other business can remain open and operate:

- 1) Sanatoria;
- 2) Medical clinics;
- 3) Pharmacies;
- 4) Restaurants which provide takeaway and delivery services;
- 5) Residential and dining parts of hotels;
- 6) Small convenience stores;

7) General shops;

8) Those parts of a shopping mall which contain supermarkets, pharmacies, food and/or essential goods for living;

9) Factories;

10) Security businesses;

11) Financial businesses;

12) Banks;

13) ATMs;

14) Those parts of markets and market fairs selling fresh foods, dry foods, ready-to-eat foods, animal foods and essential goods for living;

15) Cooking gas, fuel shops, petrol stations and NGV/LPG gas stations;

16) Companies providing carriage of goods or persons; and

17) Companies providing online delivery services for food and other goods.

EXPORT CONTROLS

Pursuant to Export Notification 8 of 2020, effective from 21 February 2020 until 30 June 2020, the export of the following without a permit is prohibited:

- Medical masks and/or masks, containing carbon or valves;
- N95 masks;
- Disposable mask for Industry; and
- Disposable dust mask and/or masks, containing carbon or valves.

"From 21 February 2020 until 30 June 2020, the export of [face masks] without a permit is prohibited."

HAND SANITISER

On 9 March 2020, the government reversed its decision to reclassify hand sanitiser as a medical device. The reclassification took effect in September 2019 and was intended to ensure that minimum alcohol levels were maintained in the production of hand sanitiser. Reversal of the reclassification removes hand sanitiser from the list of medical devices. On this basis, it can be distributed and exported as a general household product.

You can also read our second part on changes to employment rights in Thailand [here](#).

WATSON FARLEY & WILLIAMS

Nattachat Urairong, a former Associate in our Bangkok office, also contributed to this article.

KEY CONTACTS



ALAN POLIVNICK
PARTNER • SYDNEY

T: +61 2 9276 7607

apolivnick@wfw.com



RACHAPOL SIRIKULCHIT
SENIOR ASSOCIATE • BANGKOK

T: +66 2 665 7849

rsirikulchit@wfw.com



**NICHAREE
MUSIKAPRAPHAN**
ASSOCIATE • BANGKOK

T: +66 2 665 7840

nmusikapraphan@wfw.com



SIRIRAT RINSIRI
ASSOCIATE • BANGKOK

T: +66 2 665 7863

srinsiri@wfw.com

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