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Legislative developments – October 2023



BANGLADESH



Banking and Finance

Circular No. 17 dated 18 October 2023 issued by the Foreign Exchange Policy Department of the Bangladesh Bank on the “Disbursement of NRB Remittances to their Beneficiaries”

In an effort to reduce the shortage of foreign currency, the Bangladesh Bank issued a directive to banks, instructing them to distribute remittances to recipients within a maximum of two days from when they are received from overseas senders. Although this rule has been in force since 2014, the Bangladesh Bank recently found a lack of adherence to it.

SRO No. 291/AIN2023 dated 19 October 2023 issued by the Financial Reporting Council (“FRC”) on “Regulations on the Definition of a Public Interest Entity (Based on the Minimum Workforce) 2023”

The latest regulations introduce a novel concept, defining a “public interest entity” based on the minimum workforce employed. According to the FRC, for a corporation or institution to be classified as a public interest entity, it must have a workforce of at least 50 individuals.

In these regulations, “workforce” encompasses all individuals engaged within an entity or establishment, whether on a permanent, temporary, casual, contractual, or outsourcing basis, and whether they receive a salary or participate in profit-sharing arrangements. The term “corporation or institution” pertains to any entity established under the purview of the law or duly registered and licensed in accordance with the relevant legal requirements.

The FRC or its authorized representatives have the authority to require entities to furnish a range of documents, including staffing rosters, appointment guidelines, salary records, payroll data, financial statements, audit reports, and more, to allow for the verification of the actual size of the entity’s workforce.

Circular No. BSEC/CMRRCD/2009-193/65/PRD/147 dated 2 October 2023 issued by the Bangladesh Securities and Exchange Commission (“BSEC”) on “The BSEC (Commodity Exchange) Rules 2023”

The framework consists of 66 rules along with various forms and exhibits, aimed at ensuring a level playing field, efficiency, transparency, and orderliness in trading commodity derivatives contracts. These rules serve to protect the interests of investors and the public while fostering the growth of the commodity derivatives market.

Key highlights

The new regulations cover a wide range of aspects of the commodity exchange market, including registration, conduct, oversight, examination, enforcement, and penalties. Here are some key highlights:

Registration: The rules outline detailed procedures for the registration of commodity exchanges, commodity derivatives brokers, clearing houses, and clearing and settlement companies. To be registered, entities must obtain approval from the BSEC and meet specific conditions and requirements.

Conduct guidelines: These regulations establish codes of conduct for registered entities and their personnel, including directors, officers, employees, and agents. They cover responsibilities related to diligence, loyalty, the prohibition of fraudulent practices, and the maintenance of accurate records, among other things.

Oversight requirements: The rules mandate that registered entities establish and maintain systems to oversee their operations and activities. These systems should include internal controls, risk management measures, and surveillance mechanisms, among other elements.

Inspection and compliance: The regulations empower the BSEC to inspect registered entities to ensure compliance with the rules and other relevant laws. The BSEC has the authority to take corrective actions or impose penalties based on the findings of these inspections.

Disciplinary procedures: The rules outline procedures for addressing violations of the rules by registered entities or their associated individuals. Disciplinary actions can range from issuing warnings and fines to suspension or revocation of the entity's registration.

Enforcement mechanisms: The rules establish mechanisms for enforcing compliance with the rules and orders of the BSEC. They include adjudication proceedings, avenues for appealing to the BSEC or the courts, and similar measures.

Customs

"Draft Customs Bill of 2023," Bill No. 29 dated 25 October 2023 placed at the Bangladesh Parliament

The draft Customs Bill of 2023 aims to establish fiscal responsibility and transparency in the collection of import revenue and the facilitation of trade. This bill has been revised to incorporate contemporary provisions for revenue collection, the expansion of import and export trade, the promotion of business activities, and the growth of new industrial sectors.

Key highlights

Language and section expansion: Unlike the current Customs Act of 1969, which is in English, the draft Customs Act of 2023 was drafted in the native Bengali language. The number of sections has expanded—from 223 currently to 269 sections in the draft.

Incorporation of international standards: Changes were made to align with international agreements and conventions endorsed by the World Customs Organization to enhance revenue collection and trade facilitation. It also incorporates global best practices, such as the Authorized Economic Operator program, the Mutual Recognition Agreement, electronic declaration, risk management, post clearance audits, and non-intrusive inspections.

Trade facilitation agreement inclusions: The draft includes essential elements of the Trade Facilitation Agreement established under the leadership of the World Trade Organization. This encompasses features like advance ruling, stakeholder consultation, national inquiry point, website provisions, and advance passenger information/passenger name record.

Overall impact: The proposed act also addresses various other significant matters. Its enactment is expected to promote fiscal discipline, enhance accountability, and improve the processes of import revenue collection and trade facilitation.

CAMBODIA



Finance

Sub-Decree No. 249 dated 20 September 2023 issued by the Royal Government of Cambodia on “Budget Management and Public Accounting”

This sub-decree outlines the rules and procedures for State budget management, including its implementation and control, and public accounting rules to ensure efficiency, effectiveness, transparency, and accountability in public financial management. It applies to various legal entities that benefit from the State budget.

The management of the state budget management and public accounting are handled by government budget officers and public accountants.

- Budget officers are responsible for preparing strategic and annual budget plans, planning the staffing for implementation and ensuring that it is done in accordance with the relevant regulations, managing the state property in their organization’s possession, recognizing revenue, issuing income tax orders, and issuing expenditure orders.
- Public accountants are responsible for overseeing the administration of the state budget and are authorized to handle income and expenditure transactions and cash management problems. They are expected to maintain general accounting records and a budget account, make transactions through the accounting system, receive income related to income tax orders, pay out and manage the State cash funds, protect and preserve state funds and other valuable assets, keep financial and accounting documents in accordance with the regulations, and perform other duties as assigned by the Minister of Economy and Finance.

Labor

Notification No. 249 dated 14 September 2023 issued by the Ministry of Labor and Vocational Training on “Minimum Wage Setting for the Textile, Garment, Footwear, Travel Products, and Bags Sectors for 2024”

The notification specifies the new minimum wage rates for employees of textile, garment, footwear, travel products, and bags manufacturers. Starting 1 January 2024, the new rates are as follows:

- For full-time employees: US\$204 per month (an increase of US\$4 over the 2023 rate)
- For probationary employees: US\$202 per month

Other benefits that employees have been receiving will continue, including:

- US\$7 per month for travel and lodging
- US\$10 per month for a monthly work bonus
- A meal allowance of one free meal or KHR2,000 per day for employees doing overtime work
- A monthly seniority incentive ranging from US\$2 to US\$11 for employees who are in their second to eleventh year of service

LAOS



Taxation

Presidential Edict No. 003/P dated 9 October 2023 issued by the President of the Lao PDR on “Adjustment of the Excise Tax Rates of Some Goods”

The edict, which is effective from the date of signing, increases some of the excise tax rates in the Law on the Amendment of the Tax Law No. 01/NA dated 7 August 2021.

The goods that will be subject to the new excise tax rates are:

- Vehicles using fuel (sport utility vehicles and cars)
- Whiskey and other alcoholic beverages (except beer)
- Beer
- Cigarettes
- Ready-to-drink non-alcoholic beverages
- All coin-operated machines, all forms of gaming and gambling machines that have been duly permitted

The adjusted rates with their old rates are shown in the table below:

GOODS	ADJUSTED RATE	PREVIOUS RATE
Vehicles using fuel (sport utility vehicles and cars)		
▪ Below 1,000cc	31%	26%
▪ 1,000cc-1,600cc	41%	31%
▪ 1,600cc-2,000cc	56%	36%
▪ 2,000cc-2,500cc	66%	41%
▪ 2,500cc-3,000cc	82%	52%
▪ 3,000cc-4,000cc	127%	77%
▪ 4,000cc-5,000cc	200%	92%
▪ Over 5,000cc	220%	102%
Whiskey and other alcoholic beverages		
▪ Whiskey and alcoholic beverages with an alcohol content of over 23%	110%	80%
▪ Whiskey and alcoholic beverages with an alcohol content of 23% or under but not lower than 10%	90%	70%
▪ Whiskey and alcoholic beverages with an alcohol content under 10%	72%	62%

GOODS	ADJUSTED RATE	PREVIOUS RATE
Beer		
▪ Beer with an alcohol content over 5%	70%	60%
▪ Beer with an alcohol content between 0.5% to 5%	60%	60%
▪ Beer with an alcohol content below 0.5%	Same rate	20%
Cigarettes		
▪ Zica tobacco, cigars, tobacco sachets, and other forms of tobacco	72%	57%
▪ Shredded tobacco	47%	42%
Ready-to-drink non-alcoholic beverages		
▪ Carbonated beverages, soda, coffee, and other similar beverages	12%	7%
▪ Energy drinks	17%	12%
All coin-operated machines, all forms of gaming and gambling machines that have been duly permitted.	50%	Per a specific regulation or 35% per the Excise Tax Law No. 68/NA dated 19 June 2019

The excise tax rates for other goods and services that have not been adjusted under this edict will remain the same as determined under the Law on the Amendment of the Tax Law No. 01/NA.

Banking and Finance

Law on Commercial Banks (Amended) No. 39/NA dated 17 July 2023 issued and endorsed by the National Assembly and promulgated by the President of the Lao PDR

On 13 October 2023, the Lao Official Gazette published the amended law. It is effective from 15 September 2023, and replaces the previous Law on Commercial Bank Enterprises No. 56/NA dated 7 December 2018.

Some notable changes include:

Registered Capital

The minimum registered capital for domestic banks has been increased from LAK500 billion (approx. US\$24 million) to LAK1 trillion (approx. US\$48 million), while the minimum registered capital for branches of foreign commercial banks has been increased from LAK300 billion (approx. US\$14.5 million) to LAK600 billion (approx. US\$28.8 million).

Commercial banks that were incorporated and registered prior to the effective date of the amended law will have to increase their registered capital to comply with the new minimum registered capital requirements.

Change in Banking Status

A commercial bank that has 100% of its shares owned by a foreign commercial bank can be downgraded to a branch of a foreign commercial bank, or a foreign commercial bank branch can be upgraded to a 100% foreign-owned commercial bank, but in order to do so, they must fulfill the requirements and provide the necessary documents to apply for permission in accordance with the regulations set forth by the Bank of the Lao PDR.

Enterprise

Decision No. 1897/IC dated 24 October 2023 issued by the Ministry of Industry and Commerce on “Chemical Safety Consulting Services”

The decision provides guidelines for the conditions, required documents, and application process for a business operating license for those wishing to operate a chemical safety consulting business.

An investor in a chemical safety consulting business must meet the following conditions:

- Be a legal entity
- Be in good financial standing
- Have tools for demonstrating chemical safety
- Have an appropriate location for its business operations
- Have at least one employee who has a bachelor’s degree or higher in a chemistry-related field and at least three years of chemistry work experience.

To obtain a license, investors must apply to the Industry Department (“ID”) of the Ministry of Industry and Commerce or the provincial level industry and commerce office.

The documents required to be included in the application are as follows:

- An application in the standard form (ໝູ່1) provided by the ID
- A feasibility study in the standard form (ໝູ່2) provided by the ID
- A certificate of financial status issued by any commercial bank in the Lao PDR
- A copy of the enterprise registration certificate
- A copy of the land title deed or land lease agreement
- A copy of the experienced employee’s diploma for a bachelor’s degree or higher in a chemistry-related and a certificate of at least three years of chemistry work experience

The ID will review the application package and if all is satisfactory, issue a license within 10 working days of receipt of all required documents. The license is valid for two years and is renewable.

MYANMAR



Labor

Notification No. 2/2023 dated 9 October 2023 issued by the National Committee for Setting the Minimum Wage on “Adjusting the Minimum Wage”

The notification provides clarity on the revised minimum wage of MMK5,800 per eight-hour workday. The new rate includes the original minimum wage of MMK4,800 and an additional allowance of MMK1,000. It is applicable to all employees throughout the Union, regardless of their location or the type of entity in which they work. However, small-scale entities and family businesses with fewer than 10 workers remain exempt from this regulation.

The previous adjustment to the minimum wage occurred in 2018, when the committee, through Notification 2/2018, established the minimum wage of MMK4,800 per eight-hour workday.

Intellectual Property

Notifications 217/2023 and 218/2023 dated 18 October 2023 issued by the State Administration Council on the “Effective Dates of the Copyright Law 2019 and the Industrial Design Law 2019”

These notifications specify that the Copyright Law 2019 and Industrial Design Law 2019 will enter into force on 31 October 2023. While both laws were enacted in 2019, their implementation was postponed because of the COVID-19 pandemic and the political situation.

VIETNAM



Commercial Arbitration

Precedent No. 69/2023/AL dated 18 August 2023 (announced 1 October 2023) on the “Competence of Commercial Arbitration in Disputes over Non-Disclosure and Non-Compete Agreements”

On 1 October 2023, the Chief Justice of the Supreme People’s Court issued Decision No. 364/QD-CA (“**Decision 364**”) announcing seven precedents previously ratified by the Justice Council of the Supreme People’s Court on 18 August 2023, including Precedent No. 69/2023/AL (“**Precedent 69**”).

Starting on 1 November 2023, the People’s Courts and Military Courts are responsible for determining whether the rulings under Decision 364 (including Precedent 69) apply in trials.

Precedent 69 is derived from Decision No. 755/2018/QD-PQTT dated 12 June 2018 of the Ho Chi Minh City People’s Court on the “Petition for Annulment of an Arbitral Award” issued by the Vietnam International Arbitration Centre, which determined that commercial arbitrators have jurisdiction to settle the dispute and accepted the claims by a company against a former employee’s breach of a non-compete agreement for the following reasons:

- At least one of the parties conduct commercial activities.
- The agreement is separate from the labor contract; thus, it is not a labor dispute falling under the purview of the court.
- In the agreement, the parties agreed to use commercial arbitration to settle any disputes arising related to it.

Thus, going forward, Precedent 69, which recognizes the jurisdiction of commercial arbitration in these types of disputes may be used in future legal proceedings.

Taxation

Resolution No. 164/NQ-CP dated 4 October 2023 issued by the Vietnamese Government on the “Periodic Meeting Session held in September 2023 and the Online Conference between the Government and Local Authorities”

Within the framework of the meetings, the Government of Vietnam requested that local authorities continue with several areas, including the socioeconomic recovery and development program and the allocation and disbursement of public investment capital.

A highly anticipated result of the meeting was what actions and tax policies the Ministry of Finance (“MOF”) will implement to balance the State budget and address the difficulties faced by people and businesses.

The resolution laid out the following:

1. A proposed further submission to the National Assembly on the continuation of the reduction in the VAT rate by 2% for the first six months of 2024

Concurrently, the Government assigned the National Assembly Standing Committee to monitor the economic and business situation during the period between the two National Assembly sessions and it must report to the National Assembly during the next session and also report to the Prime Minister before 7 October 2023.

2. Continuing to effectively implement the reduction, exemption, and extension of taxes, fees, charges, and land rent policies that have been promulgated

Moreover, for the policies that expire after 2023, the MOF must proactively research, review, consider, promptly propose, and report to the competent authorities for extension in case of necessity to continue removing difficulties for business activities and people’s livelihoods.

3. Focusing on ensuring that the 2023 State budget revenue meets the National Assembly estimates

In particular, the MOF must accurately, thoroughly, and promptly collect taxes, as well as expand the collection base, explicitly from e-commerce, and digital platforms, as well as prevent the loss of tax revenue, especially for night-time food services and economic activities.

Labor

Guidance No. 92/HD-TLD dated 31 August 2023 issued by the Vietnam General Confederation of Labor on “Filing Lawsuits and Participating in Civil Procedures for Settling Labor Cases in Trade Union Courts”

This guidance takes effect from the date of issuance and replaces Guidance No. 995/HD-TLD dated 30 June 2016.

The key substance of Guidance 92 is to explicitly define the role of Trade Unions while pursuing lawsuits and participating in civil procedures to resolve disputes and labor matters.

1. For grassroots trade unions:

1.1. Filing lawsuits and participating in settling the following:

- Disputes over trade union fees in courts.
- Individual labor disputes in courts if they are authorized.
- Collective labor disputes over rights in courts.

1.2. Petitioning the courts to declare the invalidity of labor contracts or collective bargaining agreements; and considering the legitimacy of strikes.

1.3. Appointing representatives to participate in the following:

- Settling labor cases as defenders of workers’ legal rights and interests.
- Participating in the process of settling labor cases under the direction of the courts.
- Participating in inspection meetings on the transfer, access, and disclosure of evidence, and of mediation, according to workers’ petitions.

2. For trade unions one level above grassroots trade unions:

Their role is the same as the grassroots trade unions except that they have greater authority to participate in resolving certain cases.

In particular, they will cover most of the duties of the grassroots trade unions; however, in the cases described below, they cannot take action unless they receive a request or authorization from a worker or grassroots trade union:

- Filing lawsuits and participating in settling collective labor disputes over rights.
- Appointing representatives to participate in settling labor cases as defenders of workers’/grassroots trade unions’ legal rights and interests.
- If they cannot participate in inspection meetings on the transfer, access, and disclosure of evidence, and of mediation, as required by the workers, written documents providing their opinion are required.

3. For provincial and city labor federations, central industry trade unions and their equivalent, and trade unions of general corporations affiliated with the Vietnam General Confederation of Labour:

The role of these entities is limited to the abovementioned responsibilities of the trade unions described in Section 2, with the addition of:

- Being responsible for appointing the representatives to join the process of resolving labor cases as defenders of workers’, grassroots trade unions’, and next-level trade unions’ legal rights and interests upon receipt of their request/authorization.

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