



LEGAL DIGEST: BANGLADESH, CAMBODIA, LAOS, MYANMAR, VIETNAM

Legislative developments – **January 2023**

LAWS AND REGULATIONS

Energy

Bill No. 06 dated 22 January 2023 issued by Bangladesh Energy Regulatory Commission (“BERC”) on “Amendment of the Bangladesh Energy Regulatory Commission Act 2003”

A parliamentary amendment of the Bangladesh Energy Regulatory Commission Act on the adjustment of gas and electricity tariffs was passed. As per the amendment, a new clause has been added that allows the government to adjust tariffs by notification or official gazette without a public hearing.

The amendment also shortened the time period for the BERC to make a decision on proposals submitted by licensees seeking adjustment of a tariff. Previously, the BERC had 90 days from receipt of a proposal to publish notification of its decision; that period has changed to 60 days.

Banking and Finance

Circular No. 02 dated 8 January 2023 issued by the Foreign Exchange Investment Department of Bangladesh Bank on “The Simplification of Documentary Formalities for Opening Non-Resident Investors’ Taka Accounts (“NITAs”)”

Bangladesh Bank provided clarification on the opening of NITAs in the name of NRBs (non resident Bangladeshi). Per the circular, authorized dealers (“ADs”) should obtain the following documents and information from applicants:

- Copy of the applicant’s valid passport
- Photograph of the applicant
- Proof of address of the applicant
- Evidence of the applicant having a reliable source of income
- Copy of the nominee’s/authorized person’s passport or national identity card
- Photograph of the nominee/authorized person



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For opening NITAs in the name of non-resident foreign nationals or institutions, ADs should establish and distribute a unified set of documents to their branches at home and abroad to comply with the existing rules and regulations.

*Circular No. 01 dated 18 January 2023 issued by the SME and Special Programs Department of Bangladesh Bank on “**The Disbursement of Working Capital Loans under the BDT25,000 crores Refinancing Scheme for Cottage, Micro, Small & Medium Enterprises (“CMSMEs”)**”*

Bangladesh Bank has issued further guidelines on its BDT25,000 crores refinancing scheme that was introduced in July 2022 to support CMSMEs. The scheme allows for banks and financial institutions to receive funds at 2% interest for lending to CMSMEs at up to 7% interest.

Since its inception, Bangladesh Bank noticed that some banks and financial institutions are giving loans for more than 12 months, which is a violation of the policy. To prevent this kind of violation, Bangladesh Bank has issued this circular specifying that loans can only be given for a maximum period of 12 months, although they can be renewed upon an application to Bangladesh Bank.

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Tax

Prakas 002 MEF.Prk.GDT dated 6 January 2023 issued by the Ministry of Economy and Finance on “Continuation of the Suspension of the Prepayment of Tax on Income Payments for Enterprises in the Textile and Garment Industry”

This Prakas extends the suspension of the requirement to make Prepayment of Tax on Income payments for the textile and garment industry, which covers enterprises that produce garments, textiles, footwear, bags, handbags, and hats for export. The suspension only applies to enterprises that are recognized as qualified investment projects, and it has been extended through the end of 2025 (the suspension was originally to have expired at the end of 2022).

For such enterprises to be eligible for the suspension, they must:

- Maintain proper accounting records following the provisions of the Law on Taxation and the Law on Accounting in force;
- File and pay taxes by the applicable due date; and
- Provide an annual independent audit report to the tax authorities.

Enterprises claiming the suspension that fail to comply with the above three conditions will have their suspension revoked and be penalized according to the applicable laws in force.

Press Release No. 01 PrKP dated 30 January 2023 issued by the Royal Government of Cambodia on “Relief Measures to Mitigate the Economic Impact and Support the Recovery of the Country’s Tourism Sector”

The Royal Government of Cambodia issued a press release announcing additional incentives to support the recovery of the tourism sector in Cambodia:

1. Continuation of the exemption from the payment of all types of monthly taxes, except Value Added Tax (“VAT”), for hotels, guesthouses, and travel agencies that are registered with the General Department of Taxation (“GDT”) and conduct business in Siem Reap for an additional



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- three months (from January to March 2023). These businesses still have the obligation to file tax returns and use the e-VAT system to manage VAT each month during the exemption period.
2. Continuation of facilitation through the freezing of the debt figures as of the end of 2019 and exemption from penalties for 2023 for the tourism sector.
 3. Continuation of encouraging businesses in the tourism sector to organize a skills development program for their employees, with the possibility of requesting financial support from the Skills Development Fund project, as needed.

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Investment Promotion
<p><i>Law No. 16/NA dated 7 July 2022 issued by the National Assembly on the “Promotion of Micro-, Small-, and Medium-Sized Enterprises (“MSMEs”)”</i></p> <p>This new law on MSMEs entered into force on 28 December 2022 and it replaces Law No. 11/NA dated 21 December 2011 on the Promotion of Small- and Medium-Sized Enterprises. We highlight below the pertinent changes and additions under the new law.</p> <ul style="list-style-type: none"> ▪ Article 16 now includes an accounting section with regard to the Policy on Customs and Taxation. It mentions encouragement and promotion of the development of accounting systems and the creation of mechanisms to facilitate tax calculation for MSMEs. In this revised article, MSMEs, startup businesses, businesses supporting government activities, and businesses affected by natural disasters and crises were added to the list of promoted activities, which will receive special promotions on customs and taxation, in addition to environmental protection, innovation activities, and those with new ideas to develop the business sector. ▪ Income from fund administration is now counted as one of the funding sources of the MSME promotion fund, which increases the funding sources from four to five, as below: <ol style="list-style-type: none"> 1. National budget 2. Grants 3. National and international loans 4. Voluntary contributions from individuals, legal entities, and organizations 5. Income from the fund administration ▪ A new article under the revised law identifies the uses of the MSME promotion fund: <ul style="list-style-type: none"> – Credit extensions – Funding for technical projects – Loans and interest payments – Administration payments ▪ Another new and important article identifies the authorities in charge of MSME promotion, as follows: <ul style="list-style-type: none"> – The Lao National Chamber of Commerce and Industry



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<ul style="list-style-type: none">- The Provincial Chamber of Commerce and Industry- The association for MSME promotion- Other sectors that govern the business units

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Letter No. FE-1/2861(Ka) dated 30 December 2022 issued by the Central Bank of Myanmar (“CBM”) on the “Exemption for Foreign Companies from Mandatory Forex Conversion”

The exemption was decided on by Foreign Exchange Supervisory Committee (“FESC”) Meeting Resolution No. 78/2022. The letter describes two paragraphs—1(z) and 1(aa) —from the FESC meeting resolution:

- Paragraph 1(z) states that foreign currencies of companies with more than 35% foreign shareholding (referred to herein as “**foreign companies**”) could keep foreign currency for internal use and sell to banks. However, they must seek prior approval from the FESC if they wish to use a foreign currency for outward remittances for non-trading purposes.
- Paragraph 1(aa) states that foreign companies are not allowed to trade and export non-value-added agricultural products. The trading companies permitted to export agricultural products must continue utilizing 65% of their export earnings per CBM Notification No. 36/2022.

The practice of interpretation and application of the letter remain to be settled.



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Company Law

*Directive No. 7/2023 dated 17 January 2023 issued by the Directorate of Investment and Company Administration on “**Restriction on the Use of Nominee Directors and Nominee Shareholders in Myanmar**”*

The directive states that the use of nominee directors and nominee shareholders is prohibited. DICA’s position is that the director of a company is the person who directs and controls its affairs, regardless of whether or not they have been appointed to that position. Thus, the use of a nominee director to shield the controlling person from the duties and liabilities of a director is prohibited.

The directive reiterates the requirement under the Myanmar Companies Law 2017 (“**MCL**”) that share ownership must be registered with the Myanmar Company Registrar and entered into the register of members maintained by the company. It specifies that only the person/entity registered as the share owner with the Company Registrar and in the company’s register of members is considered as the legitimate beneficial owner.

The directive also states that as per Section 421 of the MCL, beneficial ownership information is accessible by the public for a prescribed fee.

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Cross-border trade
<p><i>Decree No. 117/2022/ND-CP dated 30 December 2022 issued by the Government “Promulgating Vietnam’s Preferential Export Tariff Schedule and Special Preferential Import Tariff Schedule for Implementation of the Free Trade Agreement Between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland the “UKVFTA”) in the 2022 – 2027 Period”</i></p> <p>Accordingly, Vietnam’s export goods are eligible for the preferential export tariff rates under the UKVFTA if:</p> <ul style="list-style-type: none"> ▪ They are imported to the United Kingdom of Great Britain and Northern Ireland; ▪ They are supported by photocopies of transport documents showing that the destination is in the United Kingdom of Great Britain and Northern Ireland in accordance with the regulations in force (previously, the requirement stated “copies”); and ▪ They are supported by photocopies of import customs declaration or other substitute documents for the shipments exported from Vietnam into the United Kingdom of Great Britain and Northern Ireland in accordance with the regulations in force (previously, the requirement stated “copies”). <p>The customs declarant must provide Vietnamese or English translations of these documents if they are made in a language other than Vietnamese or English and assume responsibility for such provided translations.</p> <p>Decree No. 117/2022/ND-CP entered into force on 30 December 2022 and supersedes Decree No. 53/2021/ND-CP.</p> <p><i>Decree No. 113/2022/ND-CP dated 30 December 2022 issued by the Government “Promulgating Vietnam’s Special Preferential Import Tariff Schedule for Implementation of the Free Trade Agreement Between the Socialist Republic of Vietnam, of the One Part, and the Eurasian Economic Union and Its Member States, of the Other Part, (“VN-EAEU FTA”) in the 2022–2027 Period”</i></p> <p>Accordingly, imports into Vietnam will be eligible for the special preferential import tariff rates under the VN-EAEU FTA if all three of the following conditions are met:</p> <ul style="list-style-type: none"> ▪ They are included in the special preferential import tariff schedule enclosed with the decree.



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- They are imported from member states of the VN-EAEU FTA:
 1. The Republic of Armenia;
 2. The Republic of Belarus;
 3. The Republic of Kazakhstan;
 4. The Kyrgyz Republic; and
 5. The Russian Federation.

- They meet the origin criteria (including provisions on direct consignment) and are supported by proof of origin as prescribed in the VN-EAEU FTA and the regulations in force.

Decree No. 113/2022/ND-CP entered into force on 30 December 2022 and supersedes Decree No. 150/2017/ND-CP.

Decree No. 115/2022/ND-CP dated 30 December 2022 issued by the Government “Promulgating Vietnam’s Preferential Export Tariff Schedule and Special Preferential Import Tariff Schedule for Implementation of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the “CPTPP Agreement) in the 2022–2027 Period”

Accordingly, procedures for claiming preferential export duty rates under the CPTPP Agreement are as follows:

- When following customs procedures, the customs declarant must make the export declaration, apply the export duty rate, and calculate and pay the export duties according to the export tariff schedule enumerated in:
 - The list of taxable goods enclosed with the decree promulgating the preferential export tariff schedule and special preferential import tariff schedule;
 - The list of commodities and their flat tax, compound tariff, and out-of-quota import tariff rates, and their amending documents Within one year from the date of registration of the export declaration, the customs declarant must submit adequate documents proving that the goods meet the conditions in Point b and Point c of Article 4, Clause 5 of the decree.

- Amendments may be made to the export declaration for the purpose of claiming preferential export duty rates under the CPTPP Agreement.

- Upon expiration of the one-year time limit, exports are no longer eligible for the preferential export duty rates under the CPTPP Agreement.



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- The relevant customs authority will examine the documents submitted and declare preferential export duty rates according to the preferential export tariff schedule provided in Appendix I enclosed with the decree.
- If the exported goods meet the requirements in Article 4, Clause 5 of the decree, they will be granted the preferential export duty rates under the CPTPP Agreement and any overpaid duties will be refunded in accordance with the law on tax administration.

Decree No. 115/2022/ND-CP entered into force on 30 December 2022 and supersedes Decree No. 57/2019/ND-CP and Decree No. 21/2022/ND-CP.

Circular No. 37/2022/TT-BCT dated 26 December 2022 issued by the Ministry of Industry and Trade “Prescribing Rules of Origin under the ASEAN-Japan Comprehensive Economic Partnership Promulgated by the Minister of Industry and Trade of Vietnam on 23 December 2022”

There are two country of origin (“C/O”) Form AJs enclosed with the circular:

- C/O Form AJ of ASEAN (Appendix II)
- C/O Form AJ of Japan (Appendix III)

The text of the C/O Form AJ must be in English and include at least the minimum information prescribed in Appendix IV to the circular.

Vietnam’s C/O Form AJ issuing authorities must follow the procedures for registration of specimen signatures and impressions of official seals and update them according to the guidelines of the Ministry of Industry and Trade of Vietnam. A list of those authorities is published on the EcoSys (the electronic certificates of origin system) of the Ministry of Industry and Trade of Vietnam.

Operational procedures for certification and verification of the origin of goods must conform to the provisions of the Decree No. 31/2018/ND-CP, regulations on origin of goods, and this circular.

Circular No. 37/2022/TT-BCT enters into force on 1 March 2023.



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Decree No. 129/2022/ND-CP dated 30 December 2022 issued by the Government on “Vietnam’s Special Preferential Import Tariff for the Implementation of the Regional Comprehensive Economic Partnership Agreement (the “RCEP Agreement”) 2022-2027”

Guidelines on the special preferential import tariff rates for the implementation of the RCEP Agreement are as follows:

- If goods imported from a signatory of the RCEP Agreement (including goods from non-tariff zones of Vietnam) satisfy the conditions prescribed in the decree and do not have different RCEP tariff rates in the various Tariff Appendices promulgated with the decree, it is possible to apply the RCEP tariff rate prescribed in the Tariff Appendix for such signatory.
- If goods imported from a signatory of the RCEP Agreement (including goods from non-tariff zones of Vietnam) satisfy the conditions prescribed in the decree and have different RCEP tariff rates in the various Tariff Appendices promulgated with this decree, the RCEP tariff rate is applied as follows:
 - a. The tariff rate in the Tariff Appendix for the signatory identified as the C/O following current regulations.
 - b. In case of failure to apply the rate mentioned above, the importer may make declarations using one of the following RCEP tariff rates:
 - o The maximum tariff rate in the Tariff Appendices will apply to the same goods originating from signatories of the RCEP Agreement (including non-tariff zones of Vietnam) contributing materials and having their origins used for producing import goods if the importer can provide solid grounds for the declared information; or
 - o The maximum tariff rate in the Tariff Appendices will apply to the same goods originating from signatories of the RCEP Agreement (including non-tariff zones of Vietnam).

Decree No. 129/2022/ND-CP entered into force on 30 December 2022.

Litigation

Official Dispatch No. 206/TANDTC-PC dated 27 December 2022 issued by the Supreme People’s Court of Vietnam on “Notification of the Results of the Online Answer Session Regarding Several Problems at Trial”



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The official dispatch provides answers to 31 problems encountered during legal proceedings for criminal, civil, business, and administrative cases.

Of note is a situation related to a dispute of credit contracts, with the collateral being land-use rights and property on land (Clause 3, Section III of the official dispatch). This is to be settled by applying the method used under Caselaw No. 11/2017/AL, which recognizes mortgage contracts of land-use rights on which there are properties not owned by the mortgagor.

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Circular No. 18/2022/TT-NHNN dated 26 December 2022 issued by the Governor of the State Bank of Vietnam on “Amendments to Circular No. 09/2015/TT-NHNN on Debt Purchase and Sale by Credit Institutions and Foreign Bank Branches”

The circular provides additional cases where credit institutions do not have to satisfy the requirement for a non-performing loan ratio below 3%:

- Credit institutions under special control purchasing qualified debts as prescribed by Clause 2, Article 146a of the Law on Credit Institutions
- Credit institutions under special control purchasing qualified debts of supporting credit institutions following the scheme for the recovery of credit institutions under special control approved following Clause 1, Article 148b of the Law on Credit Institutions
- Commercial banks subject to mandatory transfer plans (transferor) purchasing qualified debts of credit institutions that receive shares/stakes under mandatory transfer plans (transferees) following the compulsory transfer scheme approved by competent authorities
- Cases of debt purchase prescribed in Points a(ii) and a(iii) of Clause 6, Article 5 of Circular No. 09/2015/TT-NHNN (amended by this circular), specifically:
- Credit institutions repurchasing debts sold to credit institutions under special control following the scheme for the recovery of credit institutions under special control approved according to Clause 6, Article 148dd of the Law on Credit Institutions
- Transferees repurchasing debts sold to transferors according to Point c of Clause 12, Article 5 of Circular No. 09/2015/TT-NHNN (amended by this circular).



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Circular No. 18/2022/TT-NHNN enters into force on 9 February 2023.

*Official Dispatch No. 9064/NHNN-TD dated 22 December 2022 issued by the State Bank of Vietnam on the “**Work of Credit and Interest Rates in the Upcoming Period**”*

The Governor of the State Bank of Vietnam requests credit institutions to:

- Focus on providing credit to business production sectors and prioritized sectors, and loan services to meet the demand for housing of people.
- Strictly control credit risks regarding investments in corporate bonds and potentially risky sectors such as investment, securities, and real estate.
- Continue to accelerate the implementation of the interest rate support program according to Decree No. 31/2022/ND-CP and Circular No. 03/2022/TT-NHNN both dated 20 May 2022.
- Continue to reduce expenditures for operations and administrative procedures, and forego unnecessary expenditures to have fiscal reserves, and strive to reduce loan interest rates following Decree No. 43/2022/QH15.
- The State Bank of Vietnam will monitor cases where credit institutions continue to increase interest rates and adopt measures to handle such credit institutions.

*Circular No. 20/2022/TT-NHNN dated 30 December 2022 issued by the State Bank of Vietnam providing “**Guidelines on One-Way Money Transfers from Vietnam to Abroad, and Payment and Money Transfers for Other Current Transactions of Resident Organizations and Individuals**”*

The circular specifies that organizations are allowed to transfer foreign currencies abroad as donations or grants in the following cases:



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- Those provided under commitments or agreements between the Government of Vietnam or a Vietnam governmental agency and a foreign country. In this case, such donations or grants are derived from the state budget or funding sources of the donor.
- Those provided to reduce the impact of disasters, epidemics, or war events. In this case, such donations or grants are voluntarily contributed by Vietnamese organizations and individuals and/or derived from funding sources of the donor.
- Those provided for programs, funds, or projects established by Vietnamese and/or foreign organizations for the purpose of supporting and encouraging the development of cultural educational (e.g. scholarships), and medical fields. In this case, such donations are derived from funding sources of the donor.

Circular No. 20/2022/TT-NHNN enters into force on 15 February 2023.

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