

LEGAL DIGEST

BANGLADESH

CAMBODIA

LAOS

MYANMAR

VIETNAM

Legislative developments – April 2023





BANGLADESH

Banking and Finance

*Circular No. 07 dated 13 April 2023 issued by the Foreign Exchange Policy Department of the Bangladesh Bank on “**Interest Rates on Borrowings from the Export Development Fund (“EDF”)”**”*

EDF loans from the Bangladesh Bank are repayable by authorized dealer banks within 180 days from the date of disbursement, which can be extended up to 270 days. The circular specifies that for loans extended beyond the 180 days, the interest rate prevailing at the time of such extension will be applicable for the extended period.

*Circular No. 04 dated 13 April 2023 issued by the Foreign Exchange Investment Department of the Bangladesh Bank on “**Placement of Funds from Offshore Banking Operations (“OBOs”) with Domestic Banking Units (“DBUs”)”**”*

OBOs are allowed to place funds with their DBUs in an amount up to 25% of the total regulatory capital of the bank to settle import payments for capital machinery, industrial raw materials, and other imports by the government.

The circular specifies a relaxation of the limit to bring further flexibility for external transactions, allowing DBUs to receive funds from any OBOs up to 40% of their total regulatory capital to settle permissible payment obligations as per the prevailing foreign exchange rules and regulations. The relaxation will remain valid until 31 December 2023.

*Circular No. 11 dated 25 April 2023 issued by the Banking Regulation and Policy Department of the Bangladesh Bank on the “**Establishment of the Export Facilitation Pre-finance Fund (“EFPF”)”**”*

Bangladesh Bank stated that it has identified that some companies, individuals, and firms that secured loans under the EDF against shipment orders but failed to repatriate the export proceeds were still accessing credit facilities under the EFPF. Per the circular, such companies, individuals, and firms will not be eligible for any new loans against the export orders under the EFPF.

CAMBODIA



Real Estate Development

Press Release No. 001 dated 12 April 2023 issued by the Ministry of Economy and Finance on "Support for Borey Real Estate Developers in Cambodia"

The press release specifies additional measures introduced by the government to maintain the stability of the construction and real estate sector (a priority sector to support overall economic growth), maintain stable employment for workers, and make it more affordable for low-income and middle-income individuals to buy homes. The measures include:

- Continuation of the Deferral of Tax Installment Payments

Borey real estate developers who pay taxes based on the tax package system determined by projected sales, will continue to enjoy a deferral of tax package system installment payments until the end of 2024, provided they have been operating housing development projects with real estate licenses issued by the Real Estate Business and Pawnshop Regulator.

Developers who do not presently possess a license must register with the regulator by the end of 2023 in order to be eligible for payment deferral until the end of 2024 under the tax package system.

- Tax Package Period Extension – Borey Real Estate Developers

For Borey real estate developers with a tax liability of less than US\$1 million, the payment time for the tax package will be extended from 12 months to 18 months, and for those with a tax liability of more than US\$1 million, it will be extended from 24 months to 36 months.

- New Borey Projects

For new or proposed borey projects, developers are required to pay tax in accordance with the applicable procedures (self-assessment system) and maintain accurate accounting records.

- Capital Gains Tax

The real estate sector in Cambodia will not be subject to capital gains tax until the year 2024.

- Stamp Duty

Transfers of ownership of buildings within a borey with a value of US\$70,000 or less will be exempt from stamp duty until the end of 2024.

- Financial Institutions

The government is requesting banks and financial Institutions to restructure loans provided to borey real estate developers in accordance with Prakas No. 7.017.344 dated 1 December 2017 on Credit Risk Classifications and Impairment Provisions, based on the institution's ability and a mutual agreement between the institution and the borey developer.

- Exemption from Penalties

Borey real estate developers will be exempt from various penalties, but developers must execute their responsibilities in accordance with Prakas No. 089 MEF.Prk on the Management of Real Estate Development Businesses.

- Financial Statements

The implementation of Prakas No. 563 MEF dated 10 July 2020 on Obligations to Submit Financial Statements for Independent Audit has been postponed until the end of 2023.

LAOS



Corporate law

Law on Enterprise (Amended) No. 33/NA dated 29 December 2022 issued and endorsed by the National Assembly and promulgated by the President of the Lao PDR

The amended enterprise law dated 29 December 2022 entered into force on 30 March 2023 and replaces the previous enterprise law (Law on Enterprise No. 46/NA dated 26 December 2013).

Some notable changes include:

Under the amended law, to register an enterprise, application dossiers can be submitted either in person or electronically to the relevant enterprise registration office.

In a change from the previous law, the timeframe for review of the application has been shortened. Upon receipt of a complete application dossier, the enterprise registration office must make a decision on the application within three business days, rather than the previous 10 business days.

Enterprises must adhere to the following requirements once they have registered and obtained an enterprise registration certificate:

- To operate controlled business activities, an investment license must first be obtained from the government investment and planning division and then a business operation license from the relevant government office.
- To operate business activities that are not on the controlled list, only a business operation license from the relevant government office is required.

Banking and Finance

Decision No. 265/BOL dated 20 March 2023 issued by the Bank of the Lao PDR on “Financial Leasing Agreements”

This decision lays out specific requirements for financial leasing agreements.

- They must be made in written form, in the Lao language using the Phetsarath OT font type. The agreement can be made in both Lao and English, but if so, the Lao wording must come before the English.
- They must contain the following basic information:
 - A description of the leased property, such as type, model number, and other important details
 - The value of the leased property, the amount of rent, and the rental calculation method and payment method
 - The duration of the financial lease agreement
 - Conditions in the event of loss or damage
 - Insurance (if any)
 - Measures and fines for breach of the agreement (if any)
 - Dispute resolution mechanism
 - Conditions for termination or cancellation of the agreement
 - Other necessary details agreed upon between the parties
- In addition to the basic information above, they must contain the following additional information:
 - The rights and obligations of the lessor, lessee, and guarantor (if any)
 - The interest rate
 - The amount to be paid in each installment, default interest, and any costs and expenses incurred to recover installment payments
 - Late payment penalty
 - Ability and method to buy the leased property before the end of the agreement
 - Termination of the agreement
 - Assignment or transfer of the rights and obligation under the agreement
 - Contact information of the department that the lessee can contact to request an amendment of the terms and conditions of the agreement
 - Schedule of installment payments in a table enclosed as an attachment to the agreement

Fines can be levied by the lessor for late payment only if the fine is specified in the agreement. The maximum default interest rate cannot exceed 150% of the normal interest rate per annum.

The decision entered into effect on the signature date.

*Decision No. 323/BOL dated 7 April 2023 issued by the Bank of the Lao PDR on “**Debt and Asset Management Companies**”*

The activities of a debt and asset management business consist of: (i) the purchase of debts; (ii) the sale and purchase of assets; (iii) debt collection services; and (iv) the rental of assets pending sale. Additionally, debt and asset management companies are permitted to invest in bonds, make additional loans, act as consultants and agents for debt and asset management, guarantee loans made by their debtors to other financial institutions, and perform other services in accordance with the Bank of the Lao PDR’s (“**BOL’s**”) regulations.

An investor that wants to operate a debt and asset management business must first register as a company with a minimum registered capital of LAK100 billion. After that, it must apply to the BOL for a business license.

An investor in a debt and asset management business must meet the following conditions:

- Be a legal entity.
- Be in good financial standing and possess sufficient funds to properly and fully establish the registered capital in accordance with the BOL's requirements.
- The members of the board of management or the board of directors must be knowledgeable and experienced in the finance, banking, or a related sector, and must not have a criminal record that includes intentional misconduct such as a financial, banking, or money laundering offense.
- Have an appropriate location for business operations.

The decision entered into effect on the signature date. #

E-Commerce

*Instruction No. 0479/IC dated 5 April 2023 issued by the Minister of Industry and Commerce on "**Notification Certification and Electronic Commerce Business Licensing**"*

This instruction was issued to further clarify Articles 6 to 17, 35 to 40, 42, 51, and 59 under the Decree on E-Commerce No. 296/GOV dated 12 April 2021.

Individuals or legal entities who are conducting an electronic commerce business, i.e. selling goods and services via their own electronic platform, selling goods and services via an electronic marketplace must obtain permission from the Department of Internal Trade ("**DIT**") of the Ministry of Industry and Commerce regarding their e-commerce operations within 90 days from the effective date of this instruction.

Application by electronic commerce businesses selling goods and services via their own electronic platform or via an electronic marketplace

Business operators must submit the following:

- An application form in accordance with the format provided by the DIT
- For legal entities, a copy of the enterprise registration certificate; for individuals, a copy of their ID or family book and certificate of residence
- For legal entities, a copy of the business operation license (for business activities that require permission from the relevant ministry)
- A copy of the certification documents to use payment services in the Lao PDR
- Two photos (3cm x 4cm) with a white background of the managing director for legal entities, or the applicant for individuals
- A power of attorney to the person or firm that is submitting the application.

The DIT will issue an e-commerce acknowledgement certificate within three working days after receiving all required documents, which will be valid for two years and may be renewed upon application at least 30 days before the expiry of the certificate.

Application to operate electronic marketplace services

An individual or legal entity who wants to provide electronic marketplace services must apply for an electronic marketplace service business license from the DIT by submitting an application in the required format. The application must have the following attached:

- A copy of the enterprise registration certificate
- A business plan that must include the following key information: (i) objectives and goals; (ii) how merchants are allowed into the electronic marketplace; (iii) how compensation is paid; and (iv) dispute resolution procedures
- A certificate of conformity with technical standards for the marketplace platform from the Ministry of Technology and Communications
- An electronic payment services certificate issued by the BOL
- Two photos (3cm x 4cm) with a white background of the managing director for legal entities, and of the applicant for individuals
- A power of attorney to the person or firm that is submitting the application

The DIT will issue a business operation license within five working days after receiving all required documents, which will be valid for three years and may be renewed upon application at least 30 days before the expiry of the license.

The instruction entered into effect on the signature date.

MYANMAR

Banking and Finance

*Standard Operating Procedures, effective on 1 May 2023, issued by the Ministry of Planning and Finance to **"Verify the Clearance of Tax Liabilities before the Remittance of Foreign Currency Abroad"***

These standard operating procedures ("**SOP**") provide guidance on the required documents and procedures for the remittance of foreign currency abroad. The SOP covers remittances of foreign currency in excess of US\$10,000 or its equivalent.

The responsibilities of the Internal Revenue Department ("**IRD**"), authorized dealer ("**AD**") banks, and those remitting foreign currency abroad ("**foreign currency remitters**") are outlined below:

Responsibilities of the Internal Revenue Department

- To issue withholding tax or other relevant tax receipts to the foreign currency remitter.
- To answer any questions that the AD banks and foreign currency remitters might have regarding the process.

Responsibilities of the AD Banks and foreign currency remitters

- AD banks must scrutinize the following documents to be submitted by the foreign currency remitter to determine whether tax has been paid in relation to remittances abroad:
 - For a remittance to transfer profits or pay for goods, evidence of a tax receipt or tax exemption for the relevant income year. Pa Ta Kha (Wa Na)-8 and SAS-1 must be verified depending on the relevant assessment system.
 - For a remittance of salary income, a certificate of withholding from salary income, Form Pa Ta Kha (Wa Nga)-15 (Ka).
 - For a remittance to pay interest, or licensing, trademark, royalty, copyright, or service fees, the tax receipt issued by the relevant tax office under the IRD evidencing that withholding tax has already been paid or that no tax is due.
 - For a foreign currency remitter who is a new taxpayer for whom no tax assessment has yet been done, Form Pa Ta Kha (Wa Nga)-01-02 with which the IRD issued the taxpayer identification number.

These SOP entered into effect on 1 May 2023.

Renewables

*Notification No. 30/2023 dated 20 April 2023 issued by the Ministry of Planning and Finance on **"Exemption from Customs Duty for the importation of Solar Products and Accessories"***

Under this notification the importation of the solar products and accessories listed below are exempt from customs duty to ensure the sufficient supply of electric power in the country:

- PV modules, solar modules, PV panels, solar panels, solar panels 92 watt CIGS (copper indium gallium selenide)
- PV/solar (hybrid/smart array) controllers, charge controllers for PV/solar
- PV/solar inverters (string/hybrid/battery/bidirectional/central)
- PV/solar mounted structures, PV/solar mounted frames, PV/Solar mounted kits (roof and ground mounted)
- PV/solar mounted systems (floating)
- PV/solar controllers and battery boxes (for the importation of a PV/solar controller together with a battery box only)

This notification entered into force on 1 April 2023.

Corporate

*Announcement for Companies posted on 1 April 2023 by the Directorate of Investment and Company Administration on the **"Required Documents and Information to include with a New Company's First Annual Return"***

Under Section 97 of the Myanmar Companies Law, companies are required to file a return (the **"first annual return"**) within two months from its incorporation. This announcement clarifies the documents and information that companies must attach to their first annual return to ensure compliance with the existing laws and that proper measures are being taken related to anti-money laundering and combating the financing of terrorism within the company, and its directors and members.

- (a) A bank credit advice stating that the amount of paid-up capital has been deposited into the bank account of the company opened and registered with the company name listed in the MyCO system.
- (b) The national registration card of each of the company's directors and a recommendation from the relevant police station for each stating that the director actually resides at the address as stated in Form A. In case of foreign nationals, Immigration Form C must be obtained under the Registration of Foreigners Rules, 1948 and provided.
- (c) A recommendation from the relevant police station stating that the company's office is actually located at or is to be opened at the address as registered in the MyCO system.

- (d) For individual (rather than legal entity) members (shareholders) stated in the registration list, the documents specified in subclause (b) above must be provided.
- (e) For legal entity members (shareholders) stated in the registration list, a copy of the company's incorporation certificate and extract or similar document.

For companies whose first annual returns do not comply with the terms above, the Company Registrar will proceed with the penalty measures pursuant to Section 430(d) of the Myanmar Companies Law:

- Issuance of a notice of intention to suspend the company.
- Suspension of the company's registration if it does not file a corrected annual return within 28 days of the notice above being issued.
- Striking off the company's registration from MyCO if it still has not filed a corrected annual return within six months from the suspension.

VIETNAM



Personal Data Protection

*Decree No. 13/2023/ND-CP dated 17 April 2023 issued by the Government of Vietnam on “**Personal Data Protection**”*

The governing scope of the decree is extraterritorial, which applies to:

- Vietnamese entities and individuals;
- Foreign entities and individuals located in Vietnam;
- Vietnamese entities and individuals operating offshore; and
- Foreign entities and individuals directly participating in or related to the processing of personal data in Vietnam.

There are two types of personal data defined in the decree: (i) basic personal data; and (ii) sensitive personal data. The decree also introduces many new regulated subjects such as data controllers, data processors, and data controlling and processing entities.

To process personal data, entities are required to obtain valid consent from the data subject, except for some exemptions stated in the decree. Entities also need to submit a dossier of impact assessment on processing personal data to the Ministry of Public Security (Department of Cybersecurity and Hi-tech Crime Prevention) when processing personal data or transferring personal data cross-border.

The decree requires entities to take measures to protect personal data, particularly having a personal data protection department and appointing a personal data protection officer. Small- and medium-sized entities are entitled to a two-year grace period from the date of commencement of operations to set up a personal data protection department and appoint a personal data protection officer.

The decree will enter into effect on 1 July 2023.

Banking and Finance

*Circular No. 02/2023/TT-NHNN dated 23 April 2023 issued by State Bank of Vietnam on “**Instructions for Credit Institutions and Foreign Branch Banks on Debt Rescheduling and Retention of Debt Categories to Assist Borrowers in Difficult Circumstances**”*

This circular went into effect on 24 April 2023. It regulates debt rescheduling, the retention of debt categories and debt classifications, and the making of loan loss provisions.

Most notable are the regulations regarding debt rescheduling, whereby credit institutions and foreign branch banks (“**Financial Institutions**”) can consider rescheduling the principal and interest payments of borrowers in difficult financial circumstances.

When considering debt restructuring, financial institutions must: (i) have the borrower request debt restructuring; (ii) consider their financial capacity; and (iii) ensure compliance with the below specifications, as set out in the circular:

- The outstanding debt associated with the principal of a loan granted before 24 April 2023.
- The principal and/or interest have to be paid within the period from 24 April 2023 to 30 June 2024.
- The outstanding debt to be rescheduled is not yet due, or is overdue for at the most, 10 days, as per the loan/financial lease agreement.
- The credit institution or foreign branch bank has determined that the borrower is unable to repay the principal and/or interest on terms of the schedule under the signed agreement because of a decrease in revenue or income compared to that specified in the principal and/or interest repayment plan under the signed agreement.
- The credit institution or foreign branch bank has determined that the borrower is able to fully repay the principal and/or interest after the debt is rescheduled.
- Debts that violate the law cannot be rescheduled.
- The rescheduled time period (including any repayment deadline extension) will vary according to the level of difficulty faced by the borrower, but shall not exceed 12 months from the due date of the outstanding debt to be rescheduled.
- The period for debt rescheduling under this circular is from 24 April 2023 to 30 June 2024.

* * *

** Information included in this document does not represent legal, tax or other advice. This document is not intended to represent a comprehensive list of all new laws and regulations issued or published in the relevant jurisdictions.*