

LEGAL DIGEST

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Legislative developments – November 2023





BANGLADESH

Banking and Finance

FE Circular No. 19 dated 29 November 2023 issued by the Foreign Exchange Policy Department of the Bangladesh Bank on "Maintenance of Foreign Currency Accounts by Resident Bangladeshis and Others with Offshore Banking Operations"

In a move to enhance offshore banking in Bangladesh, scheduled commercial banks can now actively participate in offshore banking operations (OBOs) by obtaining approval from the Bangladesh Bank. The comprehensive guidelines, approval procedures, and operational protocols for OBOs, including the acceptance of foreign currency (FC) deposits, are meticulously outlined in BRPD Circular No-02 dated 25 February 2019.

To broaden the reach of these operations, individuals residing outside Bangladesh—such as non-resident Bangladeshi nationals, persons of Bangladeshi origin, foreign nationals, companies/firms registered and operating abroad, and foreign institutional investors—are now allowed to open and maintain FC accounts in approved foreign currencies with OBOs.

Additionally, OBOs are now authorized to establish and manage FC accounts, termed as International Banking (IB) accounts. These accounts can be held in the names of resident Bangladeshi individuals and corporate entities, including Type-A, Type-B, and Type-C industrial enterprises operating in EPZs/EZs/HTPs, with authentic connections to non-residents. In this role, IB account holders act as facilitators for remitters and utilize the funds accordingly.

Accounts opened following the specified procedures will exclusively receive credits from inward remittances facilitated through official channels.

Further empowering OBOs, the circular grants them the authority to offer interest/profit on deposits in the form of term deposits. The interest rates are tiered based on the deposit period:

- For three months to one year: Benchmark reference rate + 1.5%
- For more than one year up to three years: Benchmark reference rate + 2.25%
- For more than three years up to five years: Benchmark reference rate + 3.25%

Balances held in deposit accounts can be strategically utilized for: (i) transferring funds to onshore bank accounts to meet necessary payments and various investments; and (ii) making outward remittances of the balance amount, including interest/profit, as and when necessary.

While ushering in these progressive changes, it's noteworthy that all other instructions concerning OBO transactions will remain unchanged, providing stability and consistency in OBOs in Bangladesh.

This strategic expansion aims to attract a diverse range of individuals and enterprises, fostering economic growth and financial inclusivity in the global financial landscape.

BRPD Circular Letter No. 58 dated 15 November 2023 issued by the Banking Regulation and Policy Department of the Bangladesh Bank on "Taking Measures for the Timely Disposal of Pending Cases in the Artha Rin Adalat"

The circular underscores the imperative for prompt action in resolving ongoing cases in the Artha Rin Adalat or money loan court. It underscores the legal responsibility outlined in the Money Loan Courts Act of 2003 to accelerate the adjudication of money-lending cases within a stipulated timeframe. Recent assessments by the Bangladesh Bank reveal substantial delays in concluding such cases, adversely affecting both depositors and scheduled banks. The circular attributes this delay to negligence on the part of all parties involved, with a particular emphasis on plaintiff banks. In order to rectify this situation and ensure the expeditious and timely resolution of pending cases, the circular calls upon banks to handle cases with diligence, placing emphasis on comprehensive preparation and effective communication with legal representatives.

Legislation

"The Secure Transactions of (Moveable Assets) Act" dated 13 November 2023 passed by the Bangladesh National Parliament

In Bangladesh, securing a loan from a bank typically requires providing collateral, with immovable property being frequently used. However, challenges arise when banks consider other movable assets as collateral.

This legislation aims to address these issues by streamlining lending using movable property as collateral and establishing legal protections for transactions between lenders and borrowers. It is applicable to various entities engaged in lending, including banks, financial institutions, insurance companies, microfinance institutions, and money lenders.

The Act outlines the specific types of movable properties accepted as collateral and establishes guidelines for collateral valuation, the loan application process, and the registration of financing statements. It also introduces provisions for a registration authority responsible for maintaining an electronic database of registered financing statements related to movable property collateral.

Detailing the process for creating, perfecting, fulfilling, and prioritizing security interests in movable collateral, the Act establishes that registration generally determines priority, with some exceptions. It addresses the priority of court orders and decrees.

The rights and responsibilities of secured parties and debtors are defined, particularly in the event of default, allowing for dispute resolution through negotiations, compromise, or court settlement.

The Act includes provisions related to the preservation of registration records, issuance of certificates, termination of registration, and the treatment of proceeds and income from collateral.

It grants rule-making powers to the government and regulation-making powers to the registration authority, with the flexibility for the government to amend schedules through notifications.

With the implementation of this Act, it is anticipated that more individuals will have the opportunity to secure loans by using their movable assets as collateral.

"The Patent Act" dated 13 November 2023 passed by the Bangladesh National Parliament

Parliament has introduced a new Patent Act 2023 and repealed the Patent Act 2022 aimed at better delineating the rights and responsibilities of patent holders.

Notable changes are outlined below:

Shift of administrative power: The shift of administrative power from the Office of the Registrar to the Director General of the Department of Patents, Industrial Designs, and Trademarks is significant. This centralization could streamline decision-making processes.

Court structure: The act establishes a clear court structure, with district courts handling patent cases and the provision for appeals to the High Court Division, providing a systematic approach to handling legal matters related to patents.

Validity period and renewal: The act removes the obligation to apply for renewal five years before the expiry date, offering more flexibility to patent holders. Allowing renewal applications any time before the expiry of the validity period is a practical adjustment.

Annual fee payment: The act sets a three-month fixed period for the annual fee payment with no extension possibilities, adding a sense of urgency for patent holders to fulfill their financial obligations within the stipulated time.

Revocation provisions: The act includes provisions for revocation, including for the public interest, which is a balanced approach, allowing for the protection of public welfare while maintaining the integrity of patent rights.

Compulsory license: The act grants the government the authority to issue a compulsory license in a state of emergency or for its own purposes. This reflects a balance between protecting intellectual property and responding to critical situations.

Reliefs for patent holders: The act includes a comprehensive listing of various reliefs that the district court may grant to patent holders against infringement, ensuring that patent holders have adequate legal recourse to protect their rights.

Director General's powers: The act grants certain powers to the Director General similar to those of civil courts, thus enhancing the efficiency of the patent system.

The new Patent Act 2023 addresses various aspects of patent law, from administrative processes to legal frameworks. The balance between protecting intellectual property and addressing public interest concerns seems well-crafted. The effectiveness of these changes will, of course, be seen in their implementation and how they are interpreted and applied in practice.

CAMBODIA



Royal Government

Sub-Decree No. 341 ANKr.BK dated 30 November 2023 issued by the Royal Government of Cambodia on the "Organization and Functioning of the General Secretariat of the National Authority for Alternative Dispute Resolution"

The Sub-Decree sets out the organization of the General Secretariat of the National Authority for Alternative Dispute Resolution, which will provide staff function to support the work of the National Authority for Alternative Dispute Resolution. Its roles and responsibilities are as follows:

- Set the systems for receiving complaints and disputes to be resolved through mediation and conciliation.
- Handle the administrative work, personnel, and finances of the National Authority of Alternative Dispute Resolution.
- Draft policies, strategies, and regulations on the mediation and conciliation of disputes under the National Authority's responsibility.
- Draft a code of ethics, code of conduct, instructions, and other regulations for mediating and conciliating disputes.
- Examine and consult on requests for qualification as a mediation and conciliation officer of the National Authority.
- Develop training sessions for mediation and conciliation officers of the National Authority.
- Oversee the mediation and conciliation officers of the National Authority.
- Plan on-site mediations and conciliations.
- Examine and consult on disputes that are required to be mediated and conciliated by the National Authority.
- Liaise with ministries, institutions, and relevant authorities to ensure the efficiency of the mediations and conciliations under the National Authority's jurisdiction.
- Examine, research, investigate, and consult on the dispute resolution agreement for withdrawn complaints.
- Examine and consult on the legal aspects of the complaints and disputes under the National Authority's jurisdiction.
- Collaborate with national and international development partners.
- Compile and publish laws, regulations, and other necessary documents related to mediation and conciliation under the National Authority's jurisdiction.
- Disseminate information about mediation and conciliation to the public and the relevant authorities.

- Prepare the National Authority of Alternative Dispute Resolution's budget plan and annual budget.
- Prepare monthly, quarterly, semiannual, and annual reports for the Director of the National Authority of Alternative Dispute Resolution.
- Carry out other responsibilities as instructed by the Director of the National Authority of Alternative Dispute Resolution.

Organizational structure

- The secretariat is led by one general secretary, with a number of deputy secretaries. The general secretary and deputy secretaries are appointed and terminated by Royal Decree in accordance with the request of the Prime Minister and the Director of the National Authority of Alternative Dispute Resolution.

LAOS



Natural Resources

Presidential Edict No. 002/P dated 28 September 2023 issued by the President of the Lao PDR on "Royalty Rates for Natural Resources"

This presidential edict adjusts the royalty rates for natural resources with effect from 1 January 2024 and replaces Presidential Edict No. 001/P dated 15 December 2015.

The royalty rates for natural resources under the presidential edict are as follows:

- For general mineral resources – from 2% to 13% of the sales value, depending on the type of mineral.
- For mineral resources serving construction activities – 4% of the sales value.
- For forest resources – from 4% to 50% of the sales value, depending on the type of resource.
- For water resources serving hydropower electricity projects – 1% to 5%, depending on the project capacity.
- For water resources serving manufacturing and service activities – from LAK5 to LAK10 per cubic meter, depending on the type of activity, e.g. industrial processing, mining activities, tourism, and water supply.

All domestic and foreign individuals and legal entities operating a business in respect of the use of natural resources are to implement this presidential edict when it comes into effect, except for projects that have been granted fixed rates in accordance with an executed concession agreement.

MYANMAR



Education

Directive Nos. 16/2023, 17/2023, and 18/2023 dated 7 November 2023 issued by the Ministry of Education on "Private School Registration"

The regulatory body overseeing private schools within the Ministry of Education recently introduced three definitive directives on registration.

The first directive concerns higher education schools, the second directive focuses on private basic schools teaching the national curriculum, and the third directive pertains to private schools offering an international curriculum.

All private higher education institutions, private basic schools offering the national curriculum, and private schools providing an international curriculum fall under the jurisdiction of these directives.

Application forms necessary for registration of these private schools are available through the Ministry of Education's website.

The directives encompass regulations on classroom size, provisions relevant to each school type, and detailed guidelines governing the appointment of teaching staff. Furthermore, they delineate the prerequisites for registration, detailing the information required for the registration application. They specifically address various aspects of school infrastructure and faculty, while also specifying compliance benchmarks for the various types of private schools.

The initial registration fee for private basic schools teaching the national curriculum and private schools offering an international curriculum is MMK5 million with an annual fee of MMK6 million thereafter.

For private higher education institutions, the fees are based on their classification, as follows:

- Universities: Initial registration fee of MMK10 million and an annual fee of MMK12 million
- Colleges: Initial registration fee of MMK8 million and an annual fee of MMK9 million
- Centers: Initial registration fee of MMK2 million and an annual fee of MMK2.5 million

Separate registration applications are required for each branch of an institution.

New private schools and private higher education institutions will be allowed permissible only if they satisfy all of the stipulated criteria.

VIETNAM



Banking and Finance

Circular No. 14/2023/TT-NHNN dated 20 November 2023 issued by the State Bank of Vietnam on "Internal Control Systems of Non-Bank Credit Institutions"

This circular regulates the internal control systems of non-bank credit institutions. It enters into effect from **1 October 2024**.

The circular specifies the following:

- **The internal control systems of non-bank credit institutions must have three independent lines of defense:**
 - The first line of defense serves to identify, control, and minimize risks.
 - The second line of defense has the function of developing content related to risk management, internal regulations on risk management, risk monitoring, and compliance with legal regulations.
 - The third line of defense is the internal audit function.

- **General requirements with regard to internal controls and non-bank credit institutions:**
 - Institutions must have an internal control system and it must be suitable for the scale, conditions, and complexity of the business activities of the particular institutions.
 - Institutions must have sufficient financial, human, and information technology resources to ensure the effectiveness of the internal control system.
 - Institutions must build and maintain a culture of control and professional ethical standards.
 - Institutions must have internal regulations that are in accordance with the provisions of the Law on Credit Institutions, which must ensure:
 - To comply with the provisions of Decree 14 and relevant laws.
 - That the Board of Directors and Board of Members promulgate regulations on the organization, administration, and operations of the non-bank credit institution (except for issues falling under the authority of the internal processes as governed by the Law on Enterprise).
 - That they are periodically evaluated for appropriateness and compliance with the legal regulations, and are amended and supplemented, as necessary.
 - All discussions and conclusions about the institution's internal control system in management-level meetings must be specifically recorded in the minutes.
 - An independent assessment of the internal control system is in accordance with the State Bank's regulations.

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