



NISHIMURA & ASAHI

Fourth Quarter 2022 (Oct. - Dec.)



ASIAN LEGAL UPDATE



Indonesia	1
Philippines	2
Singapore	3
Thailand	4
Vietnam	5
India	7



1. Carbon Pricing

The Minister of Environmental and Forestry Affairs of Indonesia (“MOEFA”) has enacted the long-awaited Regulation No. 21 of 2022 (“MOEFA Regulation 21/2022”), which became effective on 20 October 2022. The regulation sets out the technical guidelines for implementation of carbon pricing in Indonesia. According to MOEFA Regulation 21/2022, carbon pricing can be implemented by way of: (a) carbon trading, (b) results-based payments, and (c) carbon levies. MOEFA also can establish other mechanisms, taking into account the development of science and technology and, in doing so, MOEFA must coordinate with the relevant sectoral ministry.

With respect to carbon trading, MOEFA Regulation 21/2022 recognizes 2 trading schemes. The first is an emissions trading scheme applicable to businesses whose activities are subject to a certain upper limit of Green House Gases (“GHG”) as established by the relevant sectoral ministry. The second scheme is an emissions offset scheme applicable to businesses that are not subject to the GHG emissions cap, whereby if those businesses engage in climate change mitigation actions that have passed a certain verification process established by MOEFA, the businesses will be entitled to certain carbon credits that can be sold to other businesses (to allow the latter to offset their excessive emissions).

Carbon trading is principally designed to be carried out between businesses within the same sector or the same sub-sector. A list of some of the sectors and sub-sectors is set out below:

Sectors	Sub-sectors
1. Energy;	1. Power generation;
2. Waste;	2. Transportation;
3. Industrial processes and product utilization;	3. Solid waste;
4. Agriculture;	4. Liquid waste;
5. Forestry.	5. Farming;
	6. Plantation;
	7. Forestry;
	8. Peat and mangrove management.

Cross-sector/sub-sector carbon trading is permissible, subject to certain conditions, such as trading limits and prior approval from MOEFA. In November 2022, the Indonesian Stock Exchange was reported to have signed a memorandum of understanding with the Indonesian Carbon Trade Association to develop carbon trading in Indonesia.

However, the fully effective implementation of carbon pricing under MOEFA Regulation 21/2022 remains subject to further implementing regulations, which currently are still pending (it is expected that more than 20 pending implementing regulations will be issued in the future (during 2023-2024), including specific regulations on the emissions cap and quota, carbon rights certification, carbon registry system, and the Indonesian carbon exchange infrastructure). Additionally, to date, Indonesia has not implemented a carbon tax effectively. According to local news in October 2022, carbon tax implementation has been pushed back to 2025.

2. Update on Omnibus Law

On 25 November 2021, following a request to the Constitutional Court for judicial review of the Omnibus Law, it was found that formation of the Omnibus Law was contrary to the Constitution, and the Constitutional Court declared the Omnibus Law unconstitutional and invalid if the Government and the House of Representatives fail to “revise” the Omnibus Law within 2 years. As a response to the Constitutional Court’s order, and as an effort by the Indonesian government (“Government”) to maintain the stability of the investment climate in Indonesia, in anticipation of a potential global economic crisis in upcoming years, the Government enacted a Government Regulation in Lieu of Law No. 2 of 2022 (“Perppu 2/2022”) replacing the Omnibus Law, effective immediately (as of 30 November 2022).

As a general observation, Perppu 2/2022 essentially restates most of the provisions contained in the Omnibus Law, but with some drafting improvements and adjustments. Perppu 2/2022 also provides that all existing implementing regulations of the Omnibus Law, and the relevant laws amended by the Omnibus Law, remain valid and effective, as long as they do not contradict Perppu 2/2022, and that all business authorizations (licenses, permits, and certificates) that have been issued under the Omnibus Law regime remain valid and effective until their expiration. If Perppu 2/2022 is approved by the House of Parliament, it will become law.

1. Amendments allowing foreign engagement in exploration and development of renewable energy resources

On 15 November 2022, the Department of Energy (“**DOE**”) amended the implementing rules and regulations of the Renewable Energy (“**RE**”) Act of 2008 (“**RE IRR Amendments**”) and, with some qualifications, effectively allowed wholly foreign-owned entities to engage in exploration, development, and utilization of solar, wind, hydropower, and ocean or tidal energy. Prior to the RE IRR Amendments, these activities were open only to Filipino citizens and corporations that were at least 60% owned by Filipino citizens. The RE IRR Amendments modified this requirement and included a new provision stating that the Philippine Government may enter into RE service or operating contracts with Filipino and/or foreign citizens, or with Filipino and/or foreign-owned corporations or associations. As a result, foreign-owned corporations (i.e., Philippine corporations with more than 40% foreign-owned equity) now are qualified to apply for service or operating contracts with the Philippine Government. However, the amendment specified that it covers only the exploration, development, and utilization of solar, wind, hydropower, and ocean or tidal energy. The RE IRR Amendments qualified that the direct appropriation of water (i.e., taking or diverting water from its natural source and storing water in a dam) for power generation remains subject to the 40% foreign equity ceiling provided in the Constitution, and therefore remains reserved for Filipino citizens and Philippine corporations that are at least 60% owned by Filipino citizens.

2. Greater private sector incentives in the amended BOT Law regulations

The Build-Operate-Transfer Law (“**BOT Law**”) provides the legal framework for government agencies to enter into public-private partnerships (“**PPPs**”) with the private sector. In March 2022, the implementing rules and regulations (“**IRR**”) of the BOT Law were revised. A few months later, the PPP Center revisited the amendments and further amended the IRR (“**Revised IRR**”), which took effect on 12 October 2022.

The following were among the key amendments made to the Revised IRR:

- (i) Providing for a broader definition of Material Adverse Government Action (“**MAGA**”), subjecting the executive, judiciary, and legislative branches of government to liability under PPPs. Prior to the Revised IRR, regulatory acts of the executive branch, and acts of the legislative and judicial branches of government, were excluded from the definition of MAGA.
- (ii) Removal of the provision of the IRR that prohibited acts or decisions of regulators from being the subject(s) of arbitration. Hence, public sector partners now can be parties to arbitration proceedings.
- (iii) If initial, or proposed adjustments to, tolls, fees, rentals, or charges in a PPP contract later are disapproved by a government regulator, the Revised IRR allows the private sector partner to recover the difference from the public sector partner in accordance with the terms of the PPP contract. This incentivizes the private sector, by allowing private sector partners to profit from decisions that a government regulator may later declare to be disadvantageous or adverse to the government.
- (iv) Removal of the requirement for an unsolicited proposal to undergo initial evaluation by a technical working group, allowing these proposals to be evaluated directly by the Investment Coordination Committee.

The amendments introduce stronger government liability, and lessen red tape, to encourage the private sector to enter into more PPPs in the Philippines.

3. Mandatory SIM card registration for telecommunications companies

On 10 October 2022, Republic Act No. 11934, or the “Subscriber Identity Module (SIM) Registration Act” (“**SIM Registration Act**”) was signed into law. The Sim Registration Act took effect on 22 October 2022.

All telecommunications companies now are required (or must require retailers) to sell SIM cards only in a deactivated state. To activate SIM cards, the end-user must complete the registration process required by the law. End-users with active SIM cards are required to register their respective SIMs by April 2023; otherwise, their SIM cards will deactivate automatically, and end-users can (re)activate the relevant SIM card only upon proper registration. The registration process includes the provision of certain personal information to the telecommunications company (such as name, birth date, address, gender, and ID number). Telecommunications companies are required to maintain their own databases containing the relevant information and, significantly, may be required (via a subpoena) to submit relevant personal information to aid investigations of certain mobile numbers used in the commission of crimes, where the perpetrators’ identities cannot be ascertained.

1. Revocation of Alternative Arrangements for Meetings

The Ministry of Law has announced that measures relating to temporary alternative arrangements will be revoked from 1 July 2023 following the cessation of the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings) Orders (“**Orders**”). Details of the amendments are expected to be out in early 2023. Consequently, companies will have to resume making meeting arrangements in accordance with the Companies Act 1967 or their governing instruments, and general meetings of all listed issuers performed from and after the date of revocation of the Orders will have to return to physical mode.

Between now and the revocation date of the Orders, listed issuers may continue to utilise the Checklist issued by the Accounting and Corporate Regulatory Authority (“**ACRA**”), the Monetary Authority of Singapore (“**MAS**”) and SGX RegCo (available at <https://www.sgxgroup.com/media-centre/20220204-guidance-conduct-general-meetings-amid-evolving-covid-19-situation>), read together with the Regulator’s Column issued by SGX RegCo (available at <https://www.sgxgroup.com/media-centre/20211216-regulators-column-what-sgx-regco-expects-conduct-general-meetings-amid>), for the conduct of general meetings. Pursuant to the Checklist and Orders, and other applicable laws and regulations, meetings may be convened, held, or conducted, either entirely or in part, by electronic means, and shareholders and members (or their proxies) may vote remotely through electronic means.

SGX RegCo notes that ACRA and MAS are working on legislative amendments concerning the conduct of general meetings by electronic means after the Orders are revoked, and will work closely with MAS to provide guidance for listed issuers to have the option to conduct hybrid meetings.

2. Introduction of Manpower for Strategic Economic Priorities Scheme

The Manpower for Strategic Economic Priorities (“**M-SEP**”) scheme was launched, effective 13 December 2022. Under the M-SEP scheme, eligible companies may temporarily hire S pass and work permit holders above the prevailing Dependency Ratio Ceiling (“**DRC**”) and S Pass sub-DRC. The DRC refers to the maximum permitted ratio of foreign workers to the total workforce that a company in the designated sector is allowed to hire. To qualify, companies must (1) participate in one of the listed key economic priorities or initiatives (these include promoting investments which support Singapore’s hub strategy, promoting innovation or research and development (R&D), or supporting internationalization), and (2) commit to employing or training locals. Eligible companies can obtain additional S Pass and Work Permit quotas of up to 5% above their base workforce headcount, subject to a cap of 50 workers per company. The additional flexibility accorded under the M-SEP scheme will last for two (2) years after enrollment, and may be renewed thereafter, subject to the company meeting renewal conditions.

3. Maintaining Register of Nominee Shareholders and Identification of Registrable Controllers

Following the passing of the Corporate Registers (Miscellaneous Amendments) Act 2022 on 10 January 2022, and effective 4 October 2022, ACRA has: (a) implemented requirements under the new Guidance on Register of Nominee Shareholders (“**RONS**”) for Companies and Guidance on RONS for Foreign Companies, and (b) updated the Guidance on Register of Controllers (“**ROC**”) for Companies, Guidance on ROC for Foreign Companies and Guidance on RORC for Limited Liability Partnerships (“**LLPs**”) (among other updates). These requirements aim to strengthen Singapore’s corporate governance regime, and reaffirm Singapore’s commitment to combatting money laundering, the financing of terrorism, and other threats to the integrity of the international financial system.

Local and foreign companies are required to maintain a RONS at their registered office or at the registered office of their appointed registered filing agent. The RONS will need to contain required information about the nominator(s) of the company’s nominee shareholder(s) and must be set up by 5 December 2022. The RONS, including any particulars contained therein, is not to be made publicly available (including to any member of the company and auditors).

Companies and LLPs which are unable to identify a registrable controller who has a significant interest in or significant control over the relevant entity are required to identify individuals with executive control as their registrable controller(s). Directors with executive control and the Chief Executive Officer (CEO) must be identified as the registrable controller(s) of companies. Partner(s) with executive control must be identified as the registrable controller(s) of LLPs. Companies and LLPs that previously were unable to identify a registrable controller now are required to record the required information about individuals with executive control in their existing ROC by 5 December 2022. The same information also must be lodged with the ACRA central register (ACRA central ROC) within two (2) business days after any update(s) to the entity’s own ROC.

1. Amendment to the Civil and Commercial Code on Private Companies

On 8 November 2022, the Civil and Commercial Code Amendment Act (No. 23) B.E. 2565 (2022) (the “**Amendment**”) was published in the Government Gazette; it will become effective on 7 February 2023. The Amendment mainly revises the provisions concerning the incorporation and operation of a private company and partnership, and the merger of a private company for the purpose of facilitating business undertakings in Thailand. Among other revisions, the Amendment reduces the minimum requirement for the number of promoters of a private company from 3 to 2 persons. Furthermore, the required number of shareholders or proxies that must attend a shareholders’ meeting in order to pass a resolution on any matter now must not be less than 2. Additionally, the payment of dividends now must be completed within 1 month from the date of the relevant resolution of the general meeting or board of directors, as the case may be. The Amendment also revises the entire chapter concerning the merger of private companies and introduces a new type of merger, whereby one company survives while the others cease to exist after the merger.

2. Criteria and Procedures for Handling Personal Data Breaches

Pursuant to the Personal Data Protection Act B.E. 2562 (2019) (the “**PDPA**”), the Personal Data Protection Commission (the “**PDPC**”) issued the Notification on the Criteria and Procedures for Handling Personal Data Breaches B.E. 2565 (2022) (the “**Notification**”) on 15 December 2022, which became effective that same day. The Notification establishes criteria for personal data breach events that a data controller is obligated to report to the office of the PDPC or the data subject, the procedure the data controller must follow after becoming aware of the breach (e.g., reporting the breach to the PDPC within 72 hours), and the information that must be provided to the PDPC (e.g., brief information about the breach, information on the potential impact on the data subject(s), and measures to prevent or mitigate the breach). The data controller also is obligated to notify the affected data subject(s) of the breach, in the case of a data breach that has a high risk of affecting the rights and freedoms of persons. In this respect, the Notification also provides the factors that the data controller must take into account when assessing such risks, e.g., the nature and type of the breach, the nature and type of the personal data involved in the breach, and the quantity of personal data involved in the breach.

3. Relaxation of Regulations on Liquor Production

The Ministerial Regulation on Liquor Production B.E. 2565 (2022) (the “**Ministerial Regulation**”) came into effect on 2 November 2022, replacing the previous Ministerial Regulation on Liquor Production Permit B.E. 2560 (2017). This Ministerial Regulation revokes several requirements and limitations on liquor production in Thailand, including the minimum registered capital requirement for beer producers and the production capacity requirement for brew pubs and breweries producing bottled beers. However, the Ministerial Regulation imposes several new requirements on certain types of liquor production, such as the requirement to perform an environmental impact assessment under environmental laws and the requirement to use machinery that meets the standards established by the Excise Department. This new Ministerial Regulation also recognizes and allows the production of liquor for non-commercial use, on the conditions that the producer must obtain a license from the Excise Department and that production capacity must not exceed 200 liters per year. Moreover, a medium-sized distillery, which refers to a distillery that uses machinery with more than 5 horsepower but less than 50 horsepower, or which has more than 7 workers but less than 50 workers, is now recognized under the Ministerial Regulation. This allows community liquor producers to upscale their production capacity.

4. Restrictions on Sale of Cannabis

Notification of the Ministry of Public Health Re: Controlled Herb (Cannabis) B.E. 2565 (the “**Notification**”) was issued on 23 November 2022, and became effective on the following day, replacing the previous notification dated 16 June 2022. Under the Notification, only cannabis flowers (as opposed to cannabis in its entirety) are designated as controlled herbs. The Notification requires any person who intends to sell cannabis to obtain a license from the Ministry of Public Health, among other restrictions. The licensee is subject to the duties and prohibitions set forth in the Notification. This includes the duty to prepare information relating to the source, implementation, and stored amounts, and to report that information to the Registrar in the required form, and also includes a prohibition on selling cannabis or processed cannabis through vending machines, by electronic means, or via computer networks.

1. New Law No. 14/2022/QH15 on Anti-Money Laundering (the “New Law”)

The New Law was enacted on 15 November 2022 and shall be effective on 1 March 2023. The New Law replaces Law No. 07/2012/QH13 on anti-money laundering and includes the important new points below (among other provisions):

- (i) Customer identification information (“CII”): The New Law provides a more detailed scope for CII for individual customers, by further dividing applicable individual customers by nationality and residential location, as follows: (i) those having Vietnamese nationality only; (ii) those having one foreign nationality and residing in Vietnam; (iii) those having one foreign nationality and residing outside of Vietnam; (iv) those having two nationalities; and (v) those having no nationality. Some additional CII were added for entity customers also, such as the establishment license number, enterprise code or tax code (if applicable), and information about the director/general director and chief accountant/person in charge of accounting.
- (ii) Customer classification by levels of money laundering risk: A medium level of money laundering risk has been added, in addition to the low level and high level provided for in the old law.
- (iii) Transparency of information in legal arrangements: This new content is added by the New Law. In particular, the trustee under a legal arrangement must collect and update the CII of the grantor, trustee, beneficiary, individuals exercising ultimate control over the trust, and related parties (if any). This CII must be kept for at least 5 years after the date on which the trustee ceases to participate in trust activities, and must be provided to the competent authority and certain other parties upon request.
- (iv) Suspicious signs in several sectors: The New Law amends and supplements suspicious signs in several sectors, such as banking, life insurance, securities, games that award prizes, and the real estate business, and, in particular, newly regulates the intermediary payments sector..

2. Circular 15/2022/TT-BCT on Methods for Formulating Power Generating Tariff Ranges for Transitional Solar and Wind Power Plants (“Circular 15”)

Circular 15 was issued on 3 October 2022, and came into effect on 25 November 2022, to deal with tariff prices applicable to certain power projects that have been operating during the transition period between the old and new power policies. The primary provisions of Circular 15 include:

- (i) Applicable projects (“**transitional solar and wind power projects**”): Solar power projects and wind power projects, that have executed a power purchase agreement with Electricity of Vietnam (EVN), in whole or in part, prior to 1 January 2021 and 1 November 2021, respectively, but are not eligible for the preferential feed-in tariff provided by Decision No. 13/2020/QD-TTg and Decision No. 39/2018/QD-TTg.
- (ii) Determination of tariff ranges: In principle, the tariff for transitional solar and wind power projects ranges from a minimum value of 0 VND/kWh to the tariff ceiling corresponding to each type of power plant, which shall be calculated in accordance with the formulas set forth in Circular 15.
- (iii) Procedures for establishment of tariff ranges: Investors in transitional solar and wind power projects are responsible for submitting the feasibility study report or technical design for the relevant project to EVN within 15 days from the effective date of Circular 15, for purposes of formulating the tariff ranges. Based on this dossier, EVN shall establish tariff ranges for the Electricity Regulatory Authority of Vietnam to assess within 45 days, beginning on 25 November 2022. The Electricity Regulatory Authority of Vietnam shall assess the tariff ranges within 45 days after receiving the full dossier from EVN, and then will submit the ranges to the Minister of Industry and Trade for approval and publication on the websites of the Ministry of Industry and Trade and Electricity Regulatory Authority of Vietnam.

3. Circular 12/2022/TT-NHNN Detailing Foreign Exchange Management of Foreign Loans and Foreign Loan Repayment by Enterprises (“Circular 12”)

On 30 September 2022, the State Bank of Vietnam (“SBV”) issued Circular 12, which took effect on 15 November 2022 and replaced Circular 03/2016/TT-NHNN (“**Circular 03**”). Below are some (but not all) of the key changes:

- (i) Extension of deadline to register short-term foreign loans with SBV: By law, a short-term foreign loan must be registered with the SBV if (a) the principal repayment period has been extended and the total loan term is more than 1 year; or (b) the repayment period has not been extended, but the loan still has an outstanding balance on the first anniversary of the first drawdown (unless the loan is repaid in full within 30 working days from such first anniversary). In such cases, the registration deadline was extended from 30 days, as set forth in Circular 3, to 60 working days from the first anniversary of the relevant loan.
- (ii) New exemptions from registration for a change to a foreign loan: Circular 12 adds 3 supplemental cases which are not subject to registration for a change to a registered loan, compared with Circular 3: (a) a change to the plan for payment of interest and fees on foreign loans registered with SBV, where there is no change to the method of

determining the interest and fees specified in the foreign loan agreement; (b) a change to amount of loan proceeds to be withdrawn, repayment of principal, interest and fees within 100 currency units in the foreign loan currency comparing to those registered; and (c) actual amount of loan proceeds withdrawn or actual amount of principal repayment of a particular period is less than the registered amount.

1. Additional Disclosure Requirements for IPOs by Indian Listed Companies

On 21 November 2022, the Securities and Exchange Board of India (“SEBI”) amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018, which governs initial public offerings (“IPO”), by introducing additional disclosures to be made by the issuing company (“Issuer”), some of which are described below:

- (i) In relation to ‘key performance indicators’ (“KPIs”):
 - KPIs certified by the audit committee and statutory auditor of the Issuer;
 - KPIs about the Issuer’s business that are relevant and material to the proposed issue price;
 - A comparison of the Issuer’s KPIs with those of other Indian or globally listed peer companies of comparable size, from the same industry and with similar business models;
- (ii) A recommendation from the committee of independent directors of the Issuer is required for justification of the price band of the IPO securities, based on the disclosed quantitative factors and KPIs;
- (iii) The price per share of past primary and secondary transactions meeting prescribed thresholds.

The erstwhile traditional parameters relating to critical accounting ratios such as earnings per share, price to earnings, etc. did not relate to issuers that are loss-making, especially in the case of the new-age technology companies (“NATCs”). This amendment has largely been brought about in light of the recent increase in filings for IPOs by NATCs that do not meet the prescribed three-year track record of operating profit.

2. Adding Flexibility for Appointment of Independent Directors of Listed Companies

Effective 14 November 2022, SEBI has amended the framework relating to independent directors on the boards of listed companies. Previously, the appointment, re-appointment, and removal of an independent director of a listed company was subject to approval of the shareholders by way of a special resolution (i.e., not less than 75% of votes in favour of the resolution). Pursuant to the amendment, the revised framework is as follows:

- (i) Where a special resolution for the appointment of an independent director fails to get the requisite majority for passage of a special resolution, but (a) votes cast in favour of the resolution exceed the votes cast against the resolution; and (b) votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, the appointment of the independent director shall be deemed valid.
- (ii) Similarly, where an independent director has been appointed via the process above, that independent director may be removed only if (a) the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution; and (b) votes cast by public shareholders in favour of the resolution exceed the votes cast against.

The intention of SEBI was to decrease the influence of promoters, who exercised significant control by virtue of their shareholding, by empowering the minority shareholders in the appointment, re-appointment and removal of independent directors.

3. E-Waste Management Rules, 2022 (“Rules”) Notified

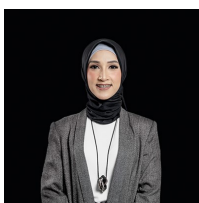
The Ministry of Environment, Forest and Climate Change has provided notice of Rules which will come into effect on 1 April 2023. The Rules are applicable, *inter alia*, to all manufacturers, producers, refurbishers, dismantlers and recycler (“Entities”) of electrical and electronic equipment or “e-waste.” Electrical and electronic equipment has been given a wide definition, and means all electrical equipment which is dependent on electric currents or electro-magnetic fields in order to become functional, and also equipment for the generation, transfer, and measurement of electricity, among other items.

The Rules establish mandatory compliance activities for all Entities, a few of which are described below:

- (i) mandatory registration on an online portal to carry out any relevant business;
- (ii) filing annual and/or quarterly returns in the required form, as applicable;
- (iii) keeping records of sales, transfers, and storage of e-waste, and making these records available for inspection by the relevant authority.

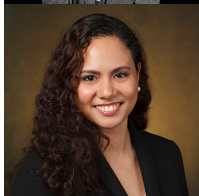
In the event of a violation of the Rules, the offender may be punished by imposition of monetary fines or, in the case of continuing violations, imprisonment for a term of up to seven years.

Contacts



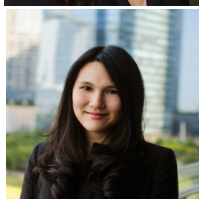
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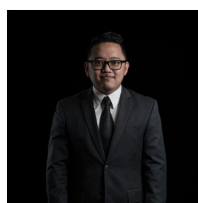
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