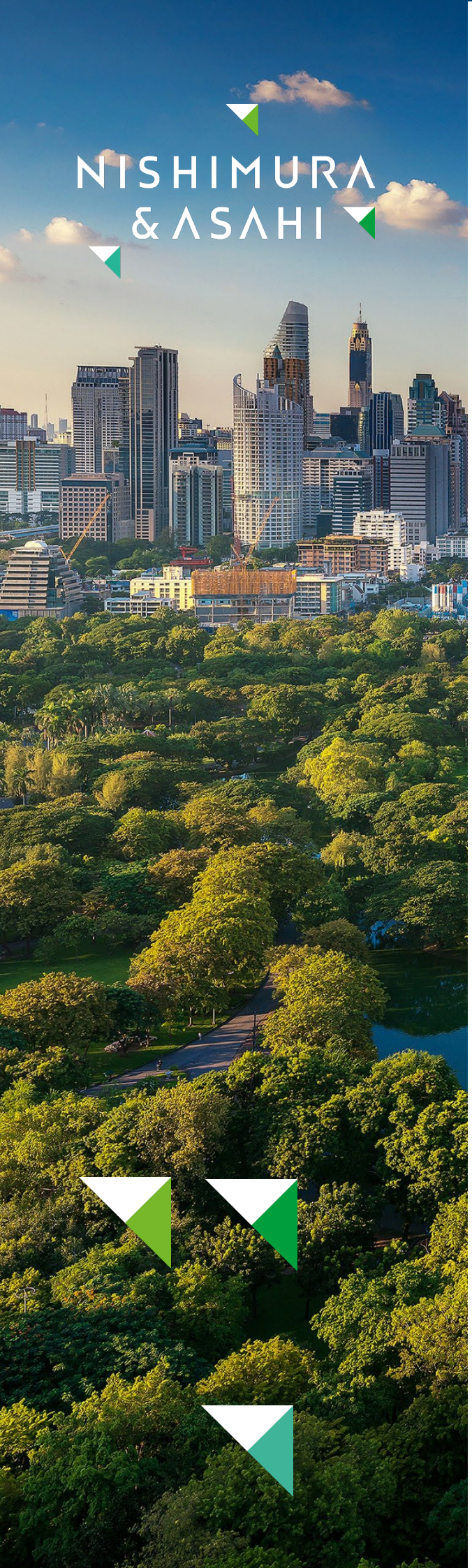

Asian Legal Update

Third Quarter 2023
(Jul. - Sep.)

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Indonesia Authors: Miriam Andreta and Jeanne E. Donauw

1. New Omnibus Health Act No. 17 of 2023

On 8 August 2023 new omnibus Health Act No. 17 of 2023 ("**New Health Act**") was enacted. Its main objective is to improve and develop Indonesia's health services industry.

Significant updates introduced by the New Health Act include, among others:

(i) The New Health Act made it easier for overseas graduate doctors practicing in Indonesia to cater to the needs of various specialist and sub-specialist healthcare services across Indonesia. This relaxation also is consistent with the government's liberalization of foreign investments in hospital and advanced clinics (*klinik utama*) business activities since 2021. Previously the sector was limited to a maximum of 67% foreign shareholding (or a maximum of 70% for ASEAN foreign investors).
(ii) The New Health Act simplifies the requirements for obtaining a medical practice license (*Surat Izin Praktik* – "SIP") and registration certificate (*Surat Tanda Registrasi* – "STR").
(iii) The New Health Act expands the recognition of telemedicine services from between healthcare service providers only to those provided directly by healthcare service providers to patients.
(iv) The New Health Act harmonizes the regulatory requirements on personal data protection aspects of the health industry with the Indonesia Personal Data Protection Act introduced in October 2022, including by way of explicitly acknowledging the rights of patients to require healthcare services providers to delete incorrect data and other rights stipulated under the Indonesian Personal Data Protection Act.

2. Carbon Trading Through Carbon Exchange

To achieve its Carbon Zero target, over the past three years, Indonesia issued various regulations to implement carbon trading in Indonesia. Among recent regulations there are Regulation No. 14 of 2023 on Carbon Trade via Carbon Exchange and Circular Letter No. 12/SEOJK.04/2023, both issued by the Indonesia Financial Services Authority (locally, "**OJK**"), collectively "**OJKR on Carbon Exchanges**", which essentially cover (i) institutional aspects of the Carbon Exchange and (ii) general rules on trade of carbon units via Carbon Exchange.
With respect to item (i) above, OJKR on Carbon Exchanges set certain general requirements with which operators of a Carbon Exchange must comply, including: (a) minimum issued and paid-up capital of IDR100 billion (approximately USD6.5 million); (b) maximum foreign (direct and indirect) shareholding of 20% of the total issued voting shares; (c) requirement to obtain licenses from OJK; and (d) Fit and Proper Test requirements for candidate shareholders, directors and the commissioner of the Carbon Exchange operator. With respect to item (ii) above, OJKR on Carbon Exchanges now clearly recognizes Carbon Units as 'securities' tradeable on the Carbon Exchange, and allows Carbon Exchange to facilitate both domestic and international trade of Carbon Units, subject to certain criteria, including that the Carbon Units must be generally registered with the Carbon Exchange and the National Registration System for Climate Change Control (*Sistem Registrasi Nasional Pengendalian Perubahan Iklim* – SRN PPI) that functions as carbon registry.

Malaysia Authors: Wan May Leong and Ryan Heng

1. Announcement of the 12th Malaysian Plan Mid-term Review

On 11 September 2023, the Prime Minister of Malaysia presented the Mid-Term Review of the 12th Malaysian Plan (2021 to 2025) ("**Mid-Term Review**") to the House of Representatives of the Parliament. The Mid-Term Review outlines the Government's strategy for achieving the objectives of the 12th Malaysian Plan by 2025 with a primary focus on enhancing sustainability, building a prosperous society and achieving high-income nation status. Within the Mid-Term Review, there are 17 "Big Shifts", which will be implemented through 71 strategies.

Among the legislative and policy reforms to fulfil the goals set out in the Mid-Term Review, notable matters are summarized as follows:

(i) The introduction of a Fiscal Responsibility Act to expand the government's revenue base, streamline tax reliefs, reduce leakages and spending wastages in procurement and projects, and improve the government's debt management;

(ii) Acceleration of the adoption of the Government Procurement Act to enhance and standardize the government procurement system and emphasize the open tendering option to ensure efficient and transparent procurement; furthermore, amendments to the Financial Procedures Act 1957 will be made to provide for provisions on procurement practices including direct negotiation practices to better manage the procurement process;

(iii) The introduction of a new anti-corruption plan as guidelines to all public and private institutions on issues of integrity, governance and corruption; new legislation on anti-rent seeking will also be explored to promote transparency and economic efficiency;

(iv) The acceleration of the development of renewable energy sources such as solar, hydrogen, biomass and hydropower to generate clean energy and enable Malaysia to meet its net zero carbon target by 2050; one of the initiatives includes the implementation of the government's National Energy Transition Roadmap (announced in August 2023) which outlines 10 flagship projects and initiatives, energy transition pathways and energy mix and emission reduction targets;

(v) New climate change laws to regulate the implementation of national climate change policies and obligations;

(vi) A bill to address cyber security issues and management will be tabled to enhance the quality of digital governance; also, a standard on e-commerce will be introduced to build trust and credibility of the e-commerce platforms;

(vii) The Companies Act 2016 and the Limited Liability Partnerships Act 2012 will be reviewed and amended to emphasize the beneficial ownership reporting framework, to further define the ownership of shares and control in company management and to enhance ownership transparency in both private and public sectors;

(viii) The introduction of new standards for halal products such as medical devices and pharmaceuticals as part of the initiative to develop Malaysia's international halal market with the goal to have a halal export value of RM63.1 billion by 2025; and

(ix) The introduction of a low-rate capital gains tax, effective in 2024, on the disposal of unlisted shares; the Prime Minister had previously clarified that such capital gains tax would not apply to the disposal of listed shares.

2. The Trade Descriptions (Marking of Pre-Packaged Goods) Order 2023

The Trade Descriptions (Marking of Pre-packaged Goods) Order 2023 ("**Order**") made by the Malaysian Minister of Domestic Trade and Cost of Living has taken effect on 1 September 2023. The Order imposes marking requirements on pre-packaged goods and applies to wholesalers, manufacturers, importers and producers for all pre-packaged goods whether packaged, manufactured or produced in Malaysia or imported into Malaysia. However, the Order does not apply to goods which are pre-packaged for export outside of Malaysia.

Some of the notable requirements of the Order are summarized as follows:

(i) Any pre-packaged goods shall, among others;

  (a) have an appropriate indication, being a specific name or description and not a generic name or description, in relation to the goods;

  (b) be expressed and marked with a nominal quantity in prescribed measurements;

  (c) be expressed and marked with a specified quantity indicator for count; and

  (d) have the name and address of the wholesaler, producer, manufacturer or importer of the goods.

(ii) The markings on pre-packaged goods shall be (a) legible, (b) use clear words in the national language or national language and any other language where it is originated from Malaysia, (c) use clear words in the national language or English language should it have originated outside Malaysia, (d) be stamped or printed in colour which makes a clear difference with the background colour of the pre-packaged goods, and (e) have a minimum height of between two to six millimetres; and

(iii) The pre-packaged goods shall not have a negative error greater than twice the tolerable deficiency as specified in the Order.

Philippines Authors: Michelle Marie F. Villarica and Steffi C. Sales

1. SEC Extension of Amnesty Applications until 6 November 2023

Entities registered with the Securities and Exchange Commission ("SEC") are required to file their general information sheet and audited financial statement annually. In addition, entities are required to provide the SEC with their official and alternate email addresses and mobile numbers as required under SEC Memorandum Circular No. 28, Series of 2020. Failure to comply with these requirements within the prescribed deadlines will generally result in fines of PHP5,000 to PHP10,000, depending on the violation, and/or other penalties including assignment of delinquent status and eventual revocation of license or registration issued by the SEC.

In March 2023, the SEC granted amnesty for fines and penalties not yet assessed and/or assessed but not yet paid for non-filing and late filing of these reportorial requirements. The initial deadline was originally set on 30 April 2023. After a few extensions, the SEC has set a final deadline to avail of and apply for amnesty by 6 November 2023. An applicant may initiate the process by filling in the Online Expression of Interest Form ("EOI") through the SEC's Electronic Filing and Submission Tool ("eFAST") available at https://cifss-ost.sec.gov.ph/ by 6 November 2023. Guidance on how to apply for the amnesty is available at https://amnesty.sec.gov.ph.

2. Reversion of Certain Tax Rates Suspended by the CREATE Law

When Republic Act No. 10963 (Corporate Recovery and Tax Incentives for Enterprises Law or "CREATE Law") was passed, it provided for certain tax rate suspensions to assist affected taxpayers with the financial effects of the COVID-19 pandemic. However, pursuant to Bureau of Internal Revenue Memorandum Circular No. 69-2023 issued on 20 June 2023, a number of taxes reverted to their original rates effective 1 July 2023.

First, the percentage tax on gross quarterly sales or receipts was reduced to 1% for the period of 1 July 2020 to 30 June 2023. Starting 1 July 2023, taxpayers must pay the original tax rate of 3% for percentage taxes. This applies to corporations, self-employed individuals, and professionals whose gross sales or gross receipts do not exceed PHP3 million, except for cooperatives and self-employed individuals and professionals availing of the 8% income tax rate.

Second, the Minimum Corporate Income Tax applicable to domestic and resident foreign corporations was reduced to 1% from 1 July 2020. From 1 July 2023, MCIT reverted to the original 2% rate based on the corporations' gross income.

Third, qualified proprietary educational institutions and non-profit hospitals whose gross income for unrelated activities do not exceed 50% of their total gross income were entitled to a reduced income tax rate of 1% from 1 July 2020. However, starting 1 July 2023, these institutions and hospitals are now subject to the original rate of 10% income tax.

3. Effectivity of Implementing Rules and Regulations for Philippines' First Sovereign Wealth Fund

Republic Act No. 11954, otherwise known as the Maharlika Investment Fund Act of 2023, was signed into law on 18 July 2023, establishing the Philippines' first sovereign wealth fund. The Maharlika Investment Fund ("MIF") is designed to initiate economic development plans and accelerate growth by optimizing the use of government financial assets. As an additional source of funding, the MIF is intended to reduce reliance on local government funds and official development assistance funds for foreign investments and domestic, government priority projects, such as those specified in the Infrastructure Flagship Project List of the National Economic and Development Authority, and projects for energy and healthcare.

The Bureau of Treasury released the MIF's implementing rules and regulations ("IRR"), which became effective on 12 September 2023. The IRR provides, among others, that the Philippine government intends to source US$9 billion equivalent for the MIF's authorized capital stock from dividends from the Central Bank of the Philippines, the Land Bank of the Philippines, and the

Development Bank of the Philippines, as well as income shares from the Philippine Amusement and Gaming Corporation, and proceeds from the privatization of government assets. However, the IRR prohibited social security and public health insurance institutions from investing in the MIF.

Following the issuance of the IRR, the Philippine government is now looking for directors and officers who will manage the MIF, while at the same time reaching out to potential foreign investors keen on investing in the Philippines.

Singapore Authors: Melissa Tan and Chin Su Xian

1. Changes in Central Provident Fund (CPF) monthly salary ceiling

From 1 September 2023, the CPF Ordinary Wage (OW) monthly salary ceiling will be raised from S$6,000 to S$6,300, then to S$6,800 from 1 January 2024, S$7,400 from 1 January 2025 and S$8,000 from 1 January 2026, pursuant to the Central Provident Fund Act 1953 (Amendment of First Schedule) Notification 2023, which amends the relevant provisions in the First Schedule of the Central Provident Fund Act 1953 of Singapore.

The CPF monthly salary ceiling limits the salary amount that will attract CPF contributions in a calendar month for all employees.

The increase in the OW ceiling is intended to take place gradually over four (4) phases to allow employers and employees to adjust to the changes. There will be no changes to the CPF annual salary ceiling of S$102,000, which sets the maximum amount of CPF contributions payable for all salaries received in the year, inclusive of both OW and Additional Wages (AW).

From an employer's perspective, such changes will result in the increased cost of hiring, as even with salaries remaining the same, employers will likewise need to contribute a higher amount each month as part of their employer's contribution. For example, assuming a S$8,000 monthly salary for a worker below the age of 55, prior to 1 September 2023 the employer's' monthly CPF contribution would be S$1,020 (17% of S$6,000). From 1 September 2023 onwards, the employers' CPF contribution would increase to S$1,071 (17% of S$6,300), and would further increase to S$1,360 (17% of S$8,000) from 1 January 2026, S$340 more than the current contribution.

For further details and the complete CPF contribution rate tables, please refer to:
https://www.cpf.gov.sg/employer/infohub/news/cpf-related-announcements/new-contribution-rates and
https://www.cpf.gov.sg/content/dam/web/employer/employer-obligations/documents/CPF%20contribution%20rates%20from%201%20Sep%202023.pdf.

2. Public Consultation for the Proposed Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems

On 18 July 2023, the Personal Data Protection Commission (the "**PDPC**") published the Proposed Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems ("**Proposed Guidelines**"), which was open for public consultation until 31 August 2023. The Proposed Guidelines focus on clarifying the way the PDPA applies to the collection and use of personal data by organisations to develop and deploy AI systems that embed machine learning (ML) models ("**AI Systems**").

Similar to other advisory guidelines published by the PDPC, the Proposed Guidelines are not legally binding, but when in effect, they will provide guidance on how the PDPC will interpret the PDPA's provisions. In essence, the Proposed Guidelines aim to clarify the application of the Singapore PDPA in the context of developing and deploying AI systems, and provide baseline guidance and best practice for organisations on ensuring transparency about whether and how their AI systems use personal data to make recommendations, predictions, or decisions.

For example, organisations are encouraged to craft notifications that will enable individuals to understand how their personal data will be processed to achieve the intended purpose, such as by (i) providing information on the function of the product that requires the collection and processing of personal data (e.g. a movie recommendation), (ii) explaining how the processing of such data is relevant to a feature of the product (e.g. an analysis of a user's viewing history in order to make the movie recommendation); and (iii) identifying specific aspects of the personal data that are more likely to influence the product feature (e.g. whether the movie was viewed in full, viewed multiple times, etc.).

With regard to the development, testing and monitoring stage of AI system implementation, it is possible for organisations to rely on certain exceptions under the PDPA (i.e. the business improvement exception and the research exception) when collecting or using personal data to develop AI systems (under Part II of the Proposed Guidelines) – however, this is limited to cases in which organisations use personal data for training and testing AI systems, as well as monitoring the performance of AI systems post deployment.

Overall, the Proposed Guidelines aim to support the responsible development and implementation of AI systems, and if fully adopted, when they come into effect, will have an impact on organisations that use personal data to develop and deploy AI systems.

Thailand Authors: Jirapong Sriwat and Apinya Sarntikasem

1. Exemption of Data Controller Obligation

The Royal Decree Prescribing Types, Businesses, or Agencies that are Partially Exempted from the Personal Data Protection Act B.E. 2562 B.E. 2566 (2023) (the "**Royal Decree**"), which provides for the non-applicability of the provisions of the Personal Data Protection Act B.E. 2562 (2019) (the "**PDPA**"), was published in the Government Gazette on 17 August 2023 and will enter into force on 13 January 2024. Under this Royal Decree, the PDPA will not apply to the data controllers who receive requests for personal data from government entities such as the National Anti-Corruption Commission, Revenue Department, Customs Department, Excise Department, local governmental bodies recognized by the Personal Data Protection Committee (the "**PDPC**"), and the Secretariat of the Cabinet, under the following principles: (i) the requests for personal data are for public interest, without imposing a disproportionate burden on the data controller; (ii) the data controllers can disclose personal data without the data subject's consent if the authorized government entities have specified in their request the provisions of law granting them such authority; (iii) the rights of the data subjects and data controllers to submit complaints or requests to the PDPA's Expert Committee shall be warranted; and (iv) the exemption from criminal liability and punishment under this Royal Decree shall not be provided to an undue action. Despite the non-applicability under this Royal Decree, the data controllers still have the duty to provide for data security in accordance with the regulations prescribed by the PDPC.

2. Appointment of a Data Protection Officer

The Notification of the PDPC Re: The Designation of the Data Protection Officer Pursuant to Section 41(2) of the PDPA (the "**PDPC Notification**") was published in the Government Gazette on 14 September 2023 and will enter into force on 13 December 2023 (90 days after publication). Under this PDPC Notification, data controllers or data processors engaging in the processing of personal data requiring the regular monitoring of personal data or systems due to having a large scale/volume of personal data, are required to appoint a data protection officer (the "**DPO**"). In determining whether the processing of personal data requires regular monitoring, only the "core activity" (i.e. activities pertaining to the primary business operations) of the data controller or data processor is taken into consideration. In this respect, "processing activities that require regular monitoring of personal data" refers to activities which involve tracking, monitoring, or analyzing the behavior, attitude, or profile of individuals, as well as the processing of personal data in a systemic manner on a regular basis. Examples of such activities include membership card programs, credit scoring, and processing of personal data by computer network system service providers. The PDPC Notification further provides that the DPO may also carry out other duties provided that the data controller or the data processor is able to represent that such other duties do not conflict with the prescribed duties of the DPO under the laws on personal data protection.

3. Amendment on the Sale of Newly Issued Shares and Warrants by an Equity Instrument Issuer

The Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2566 Re: Sale of Newly Issued Shares and Warrants by an Equity Instrument Issuer (No. 7) (the "**Amendment CMSB Notification**") was published in the Government Gazette on 21 September 2023 and entered into force on 1 October 2023. This Amendment CMSB Notification amends and expands the conditions prescribed under Clause 20 of the previous notification issued by the Capital Market Supervisory Board, by requiring the issuer of equity instruments to clearly separate or distinguish the equity instruments which will be allocated to various persons and to disclose such information in the registration statement and prospectus. In the case where it is stated that a group of persons (other than the specifically identified group of persons) will be allocated the equity instruments, the allocation must be stated as a wide allocation of equity instruments and should not be grouped/structured in order to avoid the rules governing the allocation to specifically identified groups.

4. Offshore Income and Personal Income Tax for Thai Tax Residents

The Order of the Revenue Department No. Por.161/2023 Re: Income Tax Payment Pursuant to Section 41 Paragraph 2 of the Revenue Code (the "**RD New Order**") was issued by the Director-General of the Revenue Department on 15 September 2023

and is effective on all offshore income which is brought into Thailand as of 1 January 2024 onwards. This RD New Order requires Thai tax residents to pay personal income tax on all offshore derived income which is brought into Thailand, regardless of whether such income is brought into Thailand within the same tax year in which it is earned or the subsequent tax year. In this respect, any regulations, articles, orders, letters on rulings, or practices in contrast to this RD New Order shall be canceled.

Vietnam Authors: Vu Le Bang and Nguyen Thi Thanh Huong

1. Law No. 22/2023/QH15 promulgated by the National Assembly dated 23 June 2023 on Bidding ("New Bidding Law")

On 23 June 2023, the National Assembly promulgated the New Bidding Law, which will take effect from 01 January 2024. The New Bidding Law introduces, amongst others, the following notable changes:

(i) Scope of application: The New Bidding Law supplements some new types of projects of the state-owned enterprises ("**SOE**"), which are defined as enterprises in which the State owns more than 50% charter capital or total voting shares, where the bidding is applicable, and expands the application scope of the New Bidding Law to the selection of contractors for investment projects of enterprises of which 100% charter capital is held by the SOE. The New Bidding Law clearly states cases out of scope of its application where there are conflicts with other applicable laws.

(ii) Selection of investors of projects: The New Bidding Law adds, amongst others, a list of projects where the application of international bidding is not permitted, new criteria to assess bids and select winning investors, and new conditions for project transfer.

(iii) Contracts with investors: The New Bidding Law supplements some key provisions of project contracts.

2. Decree No. 70/2023/ND-CP amending Decree 152/2020/ND-CP on foreign workers working in Vietnam and the recruitment and management of Vietnamese workers working for foreign organizations and individuals in Vietnam ("Decree 70")

On 18 September 2023, Decree 70 was issued by the Government and took effect on the same day. Decree 70 brings in amongst others, the following notable changes:

(i) Changes to the requirements imposed on foreign experts and technicians whereby they are no longer required to have *both* educational or training background and working experience in the same field as the working positions they are expected to hold in Vietnam; instead, only work experience is required to be in the same as the field of such working positions.

(ii) From 1 January 2024, the recruitment announcement of Vietnamese workers for positions expected to recruit foreign workers will be made on the information portal of competent authorities prior to determining the demand to employ foreign workers.

(iii) The management board of industrial zones no longer has the authority to grant work permits.

3. Circulars of State Bank of Vietnam (SBV) on conditions for offshore loans without Governmental guarantee and on lending activities of credit institutions and foreign bank branches with customers

(i) On 28 June 2023, SBV issued Circular 06/2023/TT-NHNN to amend Circular 39/2016/TT-NHNN on lending activities of credit institutions and foreign bank branches with customers, effective from 1 September 2023, with some notable points as follows:

- Credit institutions are newly prohibited to lend to customers for (a) making bank deposits, (b) paying for share/equity contribution or purchase in limited liability or non-listed/non-registered companies, (c) paying for contributions under capital contribution contracts, joint investment contracts, or business cooperation contracts for projects not qualified for putting into business, and (d) offsetting financial obligations. Among the above, the restrictions in (b), (c) and (d) shall come into effect only when there is further guidance from the authority on the captioned matters instead of from 1 September 2023.
- Borrowers can repay loans in a currency different from the loan currency, subject to the agreement of the credit institutions and applicable laws.

(ii) On 30 June 2023, SBV issued Circular 08/2023/TT-NHNN on conditions for offshore loans without Governmental guarantee, effective from 15 August 2023, with some notable points as follows:

- For short-term offshore loans: The borrower may borrow such loans to (a) restructure its offshore debts, and (b)

discharge its short-term payables in cash (excluding the outstanding principal of onshore loans) arising in its implementation of investment projects, production or business plans or other projects.

- For medium-/long-term offshore loans: The borrower may borrow such loans to (a) implement its investment projects, (b) implement its production or business plans or other projects, and (c) restructure its offshore debts. Medium-/long-term offshore loans may no longer be used to fund production or business plans or investment projects of other companies with direct investment of the borrower.

India Authors: Taeko Suzuki and Varsha Bhattacharya

1. Amended Valuation Rules for Angel Tax

On 25 September 2023, the Central Board of Direct Taxes issued Notification No. 81 of 2023 ("**CBDT Notification**"), per the amendment to Section 56(2)(viib) of the Income Tax Act, 1961 ("**IT Act**") via the Finance Act, 2023 (to cover all investors, regardless of their residence status). The CBDT Notification amends Rule 11UA of the Income Tax Rules, 1962, which establishes the manner of computing fair market value ("**FMV**") when determining the applicability of 'angel tax' – a tax on funds received by a private Indian company on the issuance of shares at prices higher than FMV.

Key changes made by the CBDT Notification include:

(i) New valuation methods: In addition to the discounted cash flow and net asset value methods previously established, five (5) new valuation methods are now available for shares issued to non-resident investors.

(ii) Price matching mechanism: Where consideration is received for the issuance of unlisted equity shares to a venture capital ("**VC**") fund, specified fund, or entity notified under Section 56(2)(viib) of the IT Act ("**notified entity**"), the price of those equity shares may be benchmarked as FMV for a transaction subject to angel tax, whether or not the issuance is made to a resident or a non-resident, provided that:

- the consideration from the taxable transaction does not exceed the aggregate consideration received from the VC fund, specified fund, or notified entity; and
- the consideration is received from the VC fund, specified fund, or notified entity within ninety (90) days before or after the date of issuance of shares in the taxable transaction.

(iii) Flexibility in valuation date: The rules now establish that a valuation report issued by a merchant banker is acceptable as long as it is dated within ninety (90) days prior to the date of issuance of the shares.

(iv) Safe harbour: An issue price of up to ten percent (10%) more than the FMV will not trigger the angel tax.

2. Time period for conducting shareholder meetings through video conference ("VC") or other audio-visual means ("OAVM") further extended to 30 September 2024

On 25 September 2023, the Ministry of Corporate Affairs issued General Circular 9/2023, which once again extends the time period during which Indian companies are permitted to conduct their annual general meetings and extra-ordinary general meetings through VC or OAVM. Specifically, the deadline is extended from 30 September 2023 to 30 September 2024.

Myanmar Authors: Shine Myat Khin and Aye Thin Khaing

1. Update on Regulations Governing Online Sales in Myanmar

On July 21, 2023, the Department of Trade of the Ministry of Commerce (the "**MOC**") issued Notification 50/2023, which requires registration to engage in online business. The specified registration criteria, which must be contained in an application to operate an online sales business, are based on the type of applicant (individual, company, or business organization established under existing Myanmar Law) engaging in the sale of goods and services online pursuant to Notification 51/2023 (the "**Order**") issued on July 21, 2023. An application will be accepted if it meets the criteria specified in the Order. Thereafter, the applicant must pay the registration fees using a digital payment method. A registration certificate will be issued after receipt of the relevant fees, will remain valid for a term of up to two years from the issuance date, and can be renewed. Failure to renew a registration certificate may result in its revocation. The Order also sets out the rights and obligations of registration certificate holders, failure to comply with which may result in suspension or revocation of registration certificates. Registration commenced on October 2, 2023.

The MOC further announced e-commerce guidelines on September 5, 2023 (the "**Guidelines**"). The Guidelines set forth the regulations that are relevant to every aspect of e-commerce business and add necessary provisions with which e-commerce operators must abide when performing e-commerce activities. Compliance with the Guidelines is mandatory for e-commerce operators.

The Guidelines contain provisions protecting consumer rights. For example, disclosures and notices to consumers must be clear, accurate, consistent, simple, easily accessible, and transparent. The Guidelines also contain instructions for providing information to avoid fraud and misinformation. In addition, e-commerce operators must establish clear and equitable policies or mechanisms to handle complaints and facilitate compensation for damages when resolving problems like returns, refunds, and exchanges of goods. The Guidelines set forth the relevant laws relating to e-commerce dispute resolution and settlement procedures for when disputes arise. In addition, the Guidelines regulate online consumer ratings and reviews and require that e-commerce operators be transparent and honest in this area. The Guidelines set out payment terms and conditions with which e-commerce operators must abide, including the requirement to keep payment records for at least three years and be able to provide them to consumers free of charge. Protection of personal data is also described in detail. E-commerce operators must ensure implementation of cyber security measures, manage risk-mitigation assessments properly, provide clear information on security measures, etc.

When engaging in cross-border transactions, payments made in foreign currency must be handled in accordance with laws relating to the Central Bank of Myanmar. Failure by an e-commerce operator to comply with the relevant laws mentioned in the Guidelines may result in legal action under the existing laws.

2. Customs Recordation Rules for Trademark Protection

On July 14, 2023, the Ministry of Planning and Finance issued Notification No. 50/2023 (the Customs Recordation Rules; the "**Rules**"), which set out the requirements and procedures for registered mark owners under the Trademark Law to apply and protect their rights through recordation with the Customs Department by using the form and attaching the documents specified in the Rules. If a recordation application is completed and accepted, the applicant will be provided with a recording registration number. Recordation is valid for up to two years from the application acceptance date and can be renewed.

Suspension orders by the Director General of the Customs Department can be used to suspend the release of goods from customs into free circulation, whether or not a customs recordation has been registered, by establishing sufficient grounds for the belief that counterfeit goods are being or will be imported into Myanmar.

The Rules do not apply to de-minimis goods, cargo for transshipment, cargo for reshipment, retention cargo, transit trade cargo, and/or goods allowed to be imported by the government in an emergency situation or when necessary for the good of society.

Taiwan Authors: Sheng-Chieh Chang and Cheng-Yi Chiang

1. Amendments on Securities and Exchange Act

The amendment on Securities and Exchange Act ('**the Amendment**') has come into effect on 1 July 2023. The Amendment made adjustments to powers of the audit committee and that of individual members of the committee. Some of the key features of the Amendment are as follows:

(1) Under Taiwanese Law, a request from a shareholder(s) (the shareholder(s) must have been continuously holding 1% or more of the total number of the outstanding shares of the company for over 6 months) is required for a company to file a lawsuit against its director, and in the case of a public company, before the Amendment, an individual member of the audit committee may file the lawsuit on behalf of the company upon such request. As the result of the Amendment, upon the request by the shareholder(s), a resolution of the audit committee is further required to decide whether a lawsuit should be filed against the director, and upon the decision that the lawsuit should be filed, the audit committee also decides the member(s) to represent the company.

(2) Before the Amendment, each individual member of the audit committee was allowed to convene a shareholders' meeting when deemed necessary by that member (often at the request of a faction of shareholders). In practice, this has given rise to problematic scenarios in which multiple shareholders' meetings are convened respectively by multiple members of the audit committee and the validity of each of the shareholders' meeting is denied by the opposing faction. As the result of the Amendment, a resolution of the audit committee is required to convene a shareholders' meeting. Namely, a shareholders' meeting convened by a single member of the audit committee without a resolution of the committee would be void.

(3) It is required under Taiwanese Law, that when a director engages in a self-dealing matter with the company, a supervisor, or in the case of a public company, a member of the audit committee, shall be the representative of the company. Before the Amendment, an individual member of the audit committee (who is also a director) could represent the company in these cases. After the Amendment, a resolution of the audit committee is required to elect the representative(s) of the company to deal with the director who is engaging in the self-dealing matter.

2. Draft Principles and Policies Regarding the Usage of AI in the Financial Industry

With the rapid development of generative artificial intelligence technology, the application of artificial intelligence (AI) in the realm of financial services has seen a steady increase in recent years. The Financial Supervisory Commission (FSC), in order to assist financial institutions to utilise AI technology, manage risks effectively, ensure fairness, protect consumer rights, maintain system security, and achieve sustainable development, has formulated a draft of principles and policies regarding the application of AI in the financial industry. The FSC is set to release 'directives' regarding the application of AI in the financial industry by the end of the year and therefore these principles and policies are yet to become binding. However, these principles and policies are expected to serve as soft-law and to mark the course of future regulations, and therefore warrant anticipation and attention. The core principles for AI application in the financial industries, as set out by the FSC, are as follows:

(1) Establishment of governance and accountability mechanisms:
Financial institutions should be responsible for internal governance and protection of consumer rights when using AI systems, and should exercise appropriate supervision over AI system risk management and usage.

(2) Emphasis on fairness and human-centric values:
Financial institutions should focus on offering fair and inclusive financial services when utilising AI systems, in line with human-centric and controllable principles.

(3) Safeguarding privacy and customer rights:
Financial institutions should fully respect and protect customer privacy when using customer data, and effectively manage and utilise relevant information to enhance consumer confidence and satisfaction.

(4) Ensuring system robustness and security:
Financial institutions should commit to maintain the robustness and security of AI systems, and exercise proper risk management and oversight over third-party providers to offer better financial services to consumers.

(5) Emphasis on transparency and explainability:

Financial institutions should ensure transparency and explainability of AI system operations, and should disclose its usage when utilising generative AI for business operations or as auxiliary tools for financial services.

(6) Promoting sustainable development:

Financial institutions should ensure that their development strategies and implementations align with sustainable development principles when exploiting AI systems and undertake to protect employees' right to work.

Hong Kong Authors: Ryuichi Sakamoto

1. Mandatory Electronic Dissemination of Corporate Communications

The Stock Exchange of Hong Kong ("**Exchange**") released, as of 30 June 2023, its Consultation Conclusions on the consultation paper published on 16 December 2022 to seek views on the Exchange's proposals to expand the paperless listing regime. The Exchange will adopt the proposals with a few modifications and the new requirements will become effective on 31 December 2023. Some of the major ones are as follows:

(i) Electronic dissemination of corporate communications

Listed issuers will be required to disseminate corporate communications to their securities holders electronically if this is permitted by the applicable laws and regulations and the relevant constitutional documents. Listed issuers will only be able to send corporate communications in printed form to their securities holders upon request, provided that listed issuers must disclose, on their websites, the relevant arrangements for the holders to make such a request.

(ii) Implied consent for electronic dissemination of corporate communications

The current provisions of the listing rules that indicate listed issuers must make arrangements to avail themselves of the consent mechanism for disseminating corporate communications electronically will be removed. This would enable listed issuers (to the extent permitted by the laws and regulations) to rely on implied consent for electronic dissemination of corporate communications. In this regard, the majority of listed issuers on the Exchange are incorporated in either the Cayman Islands, Bermuda or the PRC, where implied consent is generally permitted, while the Hong Kong Companies Ordinance does not permit implied consent for electronic dissemination of corporate communications. From such a standpoint, the Exchange stated that they would work to consider the issue of implied consent for the corporate communications of Hong Kong-incorporated listed issuers.

(iii) Actionable Corporate Communications to be sent to securities holders individually and electronically

Listed issuers will be required to send "Actionable Corporate Communications" (i.e., *any corporate communication that seeks instructions from issuer's securities holders on how they wish to exercise their rights as the issuer's securities holders*) to securities holders individually and in electronic form if functional electronic contact details have been provided to the issuer. Listed issuers' publishing Actionable Corporate Communications on their websites and the Exchange's website only would not satisfy this requirement. If a listed issuer does not have functional electronic contact details, an Actionable Corporate Communication must be sent to the holder in hard copy form.

2. Broadening the Scope of Insider Training

The Securities and Futures Commission ("**SFC**") published the Consultation Conclusions on 8 August 2023 and clarified that they would proceed with the proposal to amend the insider dealing provisions of the Securities and Futures Ordinance ("**SFO**"). In particular, the proposed amendments capture:

(i) insider dealing perpetrated in Hong Kong with respect to overseas-listed securities or their derivatives; and
(ii) insider dealing perpetrated outside of Hong Kong, if it involves any Hong Kong-listed securities or their derivatives

Under the current regime, the SFO only prohibits insider dealing regarding securities listed in Hong Kong and their derivatives and the SFC can only deal with suspected insider dealing in Hong Kong relating to overseas-listed securities by indirect means, for example, by providing intelligence to securities regulators in the relevant jurisdiction for cross-boundary regulatory cooperation. As such, the above amendments are to broaden the scope of insider trading for the purpose of enhancing the protection of investors.

A transition period will not be provided once the legislative amendments have been published given that the SFC stated that firms will have sufficient time to update their internal compliance policies and manuals.

Further, regarding the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("**Code of Conduct**"), as the amendments are made to some market misconduct provisions within Parts XIII and XIV of the SFO, any notification requirements under the Code of Conduct also will apply. Therefore, firms should submit a report when they become aware of any suspected breaches of the amended provisions and use their best endeavors to obtain the data to submit to the SFC.

United Arab Emirates Authors: Masao Morishita and Ayush Sharma

1. Executive Regulations concerning the UAE Consumer Protection Law

The UAE Cabinet issued the Executive Regulations ("**Regulations**") concerning the Federal Law No. 15 of 2020 on Consumer Protection ("**Federal Consumer Protection Law**"). The Regulations have been made effective from 14 October 2023. The key features of the Regulations are as follows.

(i) The Regulations clarify that warranties provided by suppliers along with their products and services are required to be for the longer of the period commensurate with the nature of the products or services provided and the warranty period agreed with the consumer. The Regulations also provide that in case of breach of a warranty obligation by a supplier, a consumer will be entitled to (a) a return of the full price paid if the product or service is not provided; (b) a return of part of the price paid in case of a deficit part of the product or service; or (c) re-provision of the product or service by the supplier correctly in the manner agreed under the contract (Article 13 of the Regulations). In addition, upon request by a consumer, the Regulations impose an obligation on suppliers to furnish spare parts to consumers, within prescribed time periods (Article 14 of the Regulations).

(ii) In relation to dealings between consumers and suppliers, any terms and conditions which relieve suppliers of their responsibilities and obligations towards consumers, as stipulated under the Federal Consumer Protection Law or the Regulations, will be null and void (Article 21 of the Federal Consumer Protection Law). Examples of such conditions are provided by the Regulations and include contracts which provide suppliers with the unilateral right to amend or terminate the contracts, contracts waiving consumer rights under law, etc. (Article 34 of the Regulations)

(iii) Consumers have been provided greater protection in relation to e-commerce transactions. Suppliers have been made responsible for any failures or defects in commodities offered by third parties that use the suppliers' platforms to sell such commodities (Article 40 of the Regulations).

(iv) Hefty penalties in the range of AED 50,000 (approximately USD 13,600) to AED 1 million (approximately USD 272,000) and revocation of licenses issued to suppliers for their businesses have been prescribed for various offences by suppliers under the Federal Consumer Protection Law and the Regulations (Article 41, Addendums 1 and 2 of the Regulations). For example, AED 100,000 (approximately USD 27,200) may be imposed on suppliers who make advertisements or include descriptions on commodities or services which are deceptive or misleading (Article 8 and Addendum 2, No. 2 of the Regulations).

2. Amendments to UAE Federal Law 6 of 2018 ("Arbitration Law")

The UAE Cabinet issued Federal Law 15 of 2023 ("**Arbitration Amendment Law**"), which amends certain provisions of the Arbitration Law. The Arbitration Amendment Law has been made effective from 16 September 2023. A few key amendments are set out as follows.

(i) The parties to arbitration are now permitted to appoint an arbitrator from the board of directors, board of trustees, or similar administrative body of the arbitration institution, which was previously prohibited (Article 10 bis (1) of the Arbitration Amendment Law).

(ii) The parties to arbitration may now clearly choose to conduct arbitration hearings virtually (Article 28(1) of the Arbitration Amendment Law). In furtherance of this, an obligation has been imposed on arbitration institutions to provide technology necessary to carry out arbitration proceedings by modern technological means as per necessary standards and controls applicable in the UAE (Article 28(3) of the Arbitration Amendment Law).

(iii) Closed proceedings, which were previously limited to hearings only, have been extended to proceedings as a whole, unless otherwise agreed between the parties (Article 33(1) of the Arbitration Amendment Law).

(iv) In relation to the power of arbitral tribunals to determine the rules of evidence, it has been clarified that such power can be exercised on the condition that there is an absence of an agreement between the parties, there are no applicable rules of evidence in arbitration, and the selected rules are not in conflict with UAE public policy (Article 33(7) of the Arbitration Amendment Law).

Japan Authors: Hiroki Kaga and Aya Okada

On 21 June 2023, the 211th Ordinary Session of the National Diet ended. During the session, a total of 61 bills (60 bills submitted by the government at this session and one bill submitted by the government at the previous session) were deliberated, and ultimately, 59 out of 61 bills were enacted into legislation. The following is an overview of two acts that may of interest to many of the readers.

1. Act on Promoting Transition to the Decarbonized Growth Economic Structure (GX Promotion Act)

On 19 May 2023, the act mentioned above (the "**Act**") was promulgated, and on June 30 2023, it came into force pending some provisions. In recent years, initiatives leading to decarbonization have further accelerated on a global scale. In order to promote a smooth transition to a decarbonized growth-oriented economic structure in Japan, the Act mainly stipulates the following items: (ⅰ) development of a GX promotion strategy (Art. 6), (ⅱ) issuance of GX Economy Transition Bonds (Art. 9-), (ⅲ) collection of Fossil Fuel Charges and Specified Business Contributions (Art. 11-), (ⅳ) establishment of the GX Promotion Organization (Art. 20-), and (ⅴ) evaluation of progress and necessary revisions (Art. 11 of the Supplementary Provisions). These items are embodiments of "The Basic Policy for the Realization of GX - A roadmap for the next 10 years -" (the "**Basic Policy**") decided by the Cabinet on 10 February 2023.

In the Basic Policy, it sets forth the "Growth-Oriented" Carbon Pricing Concept. The concept aims to enhance, as well as the emission reductions, the competitiveness of the industries and economic growth, by fostering a climate for businesses to actively make efforts to decarbonize through upfront investment support and measures for emission reductions. With respect to upfront investment, the Act stipulates a framework related to the GX Economy Transition Bonds that includes the following points: (a) the GX Economy Transition Bonds may be issued during the 10 years starting FY2023 until FY2032 (Art. 7); and(b) the GX Economy Transition Bonds will be redeemed through the Fossil Fuel Charges and the Specified Business Contributions (Art. 8). With regard to measures for emission reductions, the Act introduces the Fossil Fuel Charges as a surcharge on fossil fuel supply activities. Starting from FY2028, the Fossil Fuel Charges will be levied on Fossil Fuel Extraction Operators, who extract crude oil or take it from a bonded area, based on carbon dioxide emissions (Art. 2, par. 2,3, Art. 11). Furthermore, the Act introduces the Specified Business Contributions concerning carbon emissions trading system. Starting from FY2033, electricity generation utilities who are large carbon dioxide emitters (defined under the Act as Specified Business Operators) will be allotted partial carbon dioxide emissions allowances with a fee (Art. 2, par. 5, Art. 15,16). The specific allocation of allowances and unit prices will be determined by a bidding process (Art. 17).

As the Cabinet decided the GX promotion strategy on 28 July 2023, it is expected that initiatives and investments in decarbonization will be further increase. On the other hand, according to Article 11 of the Supplementary Provisions of the Act, policies will be reviewed in light of the implementation status of the GX promotion strategy and necessary revisions will be made based on the results of the review (par. 1). Besides, according to the said article, necessary legislative measures will be taken within 2 years concerning the implementation of the concrete system of specified business emissions allowance and the Fossil Fuel Charges and the Specified Business Contributions (par. 2). The direction of policy and future legislative measures should be closely watched.

2. Act for Implementation of United Nations Convention on International Settlement Agreements Resulting from Mediation

On 21 April 2023, the act mentioned above (the "**Act**") was passed by the Diet and was promulgated on 28 April 2023. The Act provides the particulars necessary for the implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the " **Convention**"), which establishes a framework for enforcement of international settlement agreements resulting from mediation. The Act was deliberated and passed together with other two related acts in order to integrally strengthen dispute resolution in Japan, especially those administrated by private dispute resolution including international arbitration and mediation. The Act comes into effect in Japan on 1 April 2024 As of 30 September 2023, the Convention is signed by 56 countries including the United States and China, and is ratified in 11 counties including Singapore.

Japan becomes the 12th Party of the Convention.
The Act enables parties to an “international settlement agreement” as defined in the Act (Art. 2, par. 3) to enforce through civil enforcement based on the agreement with an enforceability order from the court, when the parties have agreed that it could be enforced through civil enforcement (Art.3,5). The Act is applicable to settlement agreements relating to commercial disputes (See Art. 4 for exemptions). Since the Act ensures the effectiveness of agreements resulting from international mediation, it is expect to expand the use of mediation as a means of international business disputes.

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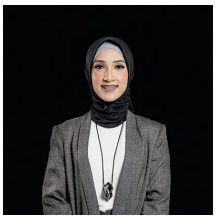

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