NISHIMURA & ASAHI

Fourth Quarter 2023
(Oct. - Dec.)

Indonesia 2
Malaysia 3
Philippines 4
Singapore 5
Thailand 6
Vietnam 7
India 8
Myanmar 9
Taiwan 10
Hong Kong 11
United Arab Emirates 12
Japan 13
Bangladesh 14
Sri Lanka 15

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E-commerce regulatory updates

The Minister of Finance of Indonesia issued Regulation No. 96 of 2023 ("**PMK 96/2023**"), as amended by the Minister of Finance's Regulation No. 111 of 2023 , requiring E-Commerce Electronic System Providers (locally, also known by its abbreviation "**PPMSE**") to partner with the Directorate General of Customs and Excise of Indonesia. This regulation applies to local PPMSE and representative offices of foreign PPMSE that act as online retail merchants and marketplaces importing more than 1,000 shipments of goods within one calendar year.

The expected partnership includes the exchange of e-catalogue and e-invoice data of the imported goods or other forms of partnership that help improve the Directorate General's services and supervision.

PPMSE with more than 1,000 shipments within one calendar year must comply with PMK 96/2023 by February 17, 2024 at the latest, and non-compliance may lead to temporary termination of customs services for future imports by said PPMSE.

PMK 96/2023 is closely linked to Ministry of Trade Regulation No. 31 of 2023 ("**Reg 31/2023**") which regulates various aspects of e-commerce, including business licensing and supervision of business actors. Key provisions of Reg 31/2023which is effective as of September 26, 2023, include:

Recognition of social-commerce businesses as PPMSE

Reg 31/2023 now officially recognizes social-commerce businesses as E-Commerce Electronic System Providers or PPMSE. As the consequence, social-commerce businesses must now comply with the rules applicable to PPMSE.

Extended responsibilities of PPMSE

PPMSE, particularly those that are exclusively electronic system providers, are required to actively help merchants trading on their platforms to (a) comply with business licensing requirements and product standards, (b) prevent unhealthy competition on their platforms, and (c) protect the personal data of their platform users.

Minimum price requirement

Reg 31/2023 requires all PPMSE to adhere to the rule of Minimum Price, which is set at the minimum of USD100 (or its equivalent in other currencies) on a Freight-on-Board (FOB)-basis per unit of goods that are directly sold (on electronic platforms) to Indonesia-based consumers. For PPMSE that are exclusively electronic system providers, the Minimum Price must be applied to their platforms and to merchants on such platforms. It was reported that this Minimum Price requirement is intended to protect local merchants.

In the event of failure to comply with this requirement, an electronic system provider may be subject to administrative sanctions such as temporary service blockages.

Mandatory requirement to appoint Indonesia-based representative office

Upon reaching a certain threshold, foreign PPMSE must appoint a representative office in Indonesia. The threshold includes either: (i) number of transactions with at least 1,000 consumers within one year, OR (ii) number of package deliveries of at least 1,000 within one year, OR (iii) if traffic or access to the electronic system comprises at least 1% of the total Indonesia-based internet users within one year.

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Malaysia

Authors: Wan May Leong and Ryan Heng

The Finance (No.2) Act 2023 ("**Finance Act 2023**") was gazetted on 29 December 2023.

1. Introduction of a Capital Gains Tax Regime in Malaysia

The Finance Act 2023 has introduced various amendments to the Income Tax Act 1967 ("**ITA**"), including the imposition of a Capital Gains Tax Regime on the disposal of unlisted shares in Malaysia ("**CGT Regime**"). The notable features of the CGT Regime include:

(i) **Application of the CGT Regime:** The CGT Regime applies to the disposal of capital assets which includes (a) shares of a company incorporated in Malaysia not listed on the stock exchange and (b) shares in a company incorporated outside Malaysia deriving value from real property in Malaysia. "Shares" is widely defined to include:
- (a) stocks and shares in a company;
- (b) loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;
- (c) a member's interest in a company, not limited to shares whether or not it has a share capital; and
- (d) any option or other right in, over or relating to shares as defined in items (a) to (c) above;

(ii) **Persons subject to the CGT Regime:** Income tax shall be charged upon the chargeable income of a company, limited liability partnership, trust body or co-operative society from each disposal of capital asset. "Disposal" means to sell, convey, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares; and

(iii) **Rate of tax:**
- (a) For the disposal of a capital asset situated in Malaysia acquired before 1 January 2024, the entity has the option to either (a) pay 10% on every ringgit of chargeable income from the disposal of the capital asset or (b) 2% of the gross disposal price;
- (b) For the disposal of a capital asset situated in Malaysia acquired on or after 1 January 2024, the entity will be charged at a rate of 10% on every ringgit of chargeable income from the disposal of the capital asset; and
- (c) For disposal of all types of capital assets situated outside Malaysia which is remitted into Malaysia, it will be based on the prevailing income tax rate for the entity.

Previously, the Prime Minister announced in his Budget 2024 speech that the Malaysian Government may consider granting exemptions from the CGT Regime on the disposal of shares related to (a) Initial Public Offerings approved by the Malaysian stock exchange, (b) restructuring of shares within the same group and (c) venture capital related investments. However, the amendments to the ITA under the Finance Act 2023 did not expressly provide for these exemptions. It remains to be seen if these exemptions will be provided via different instruments through subsidiary legislation or otherwise.

2. Amendments to the Stamp Act 1949

The Finance Act 2023 has introduced several amendments to the Stamp Act 1949 ("**Stamp Act**"). The notable amendments to the Stamp Act include:

(i) **Removal of maximum stamp duty for loans in foreign currency:** Previously, the duty chargeable for a charge or mortgage, agreement for a charge or mortgage, bond covenant, debenture, bill of sale by way of security and warrant of attorney where the loan is a foreign currency loan is 0.5% of the loan amount, subject to a maximum stamp duty cap of RM2,000. However, the Finance Act 2023 has removed the stamp duty cap for foreign currency loans;

(ii) **Conveyance of property to foreigners:** The addition of a new item 32(aa) into the First Schedule of the Stamp Act imposes a 4% stamp duty on the sale of any property to a foreign company or a person who is not a citizen and not a permanent resident of Malaysia. The stamp duty will be imposed based on either the value of the consideration or the market value of the property sold, whichever is greater; and

(iii) **Definition of "writing" or "written":** Instruments which may attract a stamp duty include every written document. To keep up with the current trend of business practices, a new definition of "writing" or "written" has been introduced to include any handwriting, typewriting, printing and electronic record or transmission which is in an electronically readable form. In brief, electronic instruments such as contracts concluded electronically in readable form may be chargeable with a stamp duty under the Stamp Act.

Note that the amendments above came into effect on 1 January 2024; as of the date of writing, the Inland Revenue Board of Malaysia has not issued any further guiding notes on the details and procedures. Businesses should stay informed of this new evolving tax landscape in Malaysia.

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1. Issuance of the Internet Transactions Act

On December 5, 2023, the President of the Philippines signed into law Republic Act No. 11967 or the Internet Transactions Act (the "Act"). The law regulates e-commerce to protect consumer, data privacy, and intellectual property rights while safeguarding internet security and product safety. The law covers all business-to-business and business-to-consumer internet transactions including transactions wherein the digital platform, e-retailer, or online merchant is located outside of the country and it is availing of the Philippine market.

A digital platform is defined under the Act as "information and communication technology-enabled mechanisms that connect and integrate producers and users in online environments where goods and services are requested, developed, and sold, and data is generated and exchanged." Examples of digital platforms include e-marketplaces, mobile application platforms, online delivery platforms, social media platforms, and travel platforms. The Act defines an e-marketplace as a digital platform whose business is to connect online consumers with online merchants, facilitate and conclude the sales, process the payment of the products, goods or services through the platform, or facilitate the shipment of goods or provide logistics services and post-purchase support within the platforms, or otherwise retains oversight over the consummation of the transaction. An e-retailer is defined as a natural or juridical person selling goods or services directly to online consumers through its own website, webpage, or application. An online merchant is defined as a person selling non-financial goods or services to online consumers through an e-marketplace or third-party digital platform. Under the Act, an e-retailer is also considered an online merchant if it offers the same goods or services outside its own website through a third-party digital platform and the online consumer purchases, leases, subscribes to, or obtains the service of the e-retailer through such third-party platform.

Among its requirements, the Internet Transactions Act mandates e-marketplaces and digital platforms to exercise due diligence when onboarding online merchants, maintain a list of all its online merchants registered under their platforms, and provide for an effective redress mechanism for online merchants and consumers. E-retailers and online merchants are, among other obligations, required to issue invoices for all e-commerce transactions, as well as publish information on their identity and contact information, to be clearly identifiable to online consumers.

The Act makes e-retailers, online merchants, e-marketplaces, and digital platforms liable for civil actions if they fail to comply with its requirements. The new E-Commerce Bureau, created under the Department of Trade and Industry is given the power to blacklist online businesses or take down a listing on a website or other digital platform if it relates to a prohibited sale or lease of goods or services under the law, or if it otherwise threatens public or personal safety or compromises financial or personal information.

The Internet Transactions Act is now in effect and gives all affected parties until June 2025 to comply with its requirements.

2. Implementation of the Philippine Travel Rule for Virtual Asset Service Providers

On December 28, 2023, the Central Bank of the Philippines ("BSP") issued Memorandum No. M-2023-042 clarifying the implementation of the Philippine Travel Rule ("PHTR") for Virtual Asset Providers ("VASPs"). Under Circular No. 1108, series of 2021 (Guidelines for VASPs), all transactions involving the transfer of virtual assets are treated as cross-border wire transfers and VASPs are expected to comply with corresponding BSP rules governing wire transfers including the obligation to provide immediate and secure transmittal of originator and beneficiary information from one VASP to another (i.e. the PHTR). In Memorandum No. M-2023-042, the BSP clarifies that for virtual asset transfers exceeding the equivalent of PhP50,000 (approximately USD900), VASPs should follow the PHTR to obtain and verify the information of the originating and beneficiary institution. For transactions below the PhP50,000 threshold, originating institutions (i.e. the sending customer's VASP) are required to ensure that the transfer or related message through the payment chain has accurate and meaningful originator and beneficiary information which includes the name of the originator and beneficiary and account number of both, in the absence of a unique reference number.

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Singapore Authors: Melissa Tan and Chin Su Xian

1. Significant Investments Review Bill

On 3 November 2023, the Ministry of Trade and Industry of Singapore ("**MTI**") introduced the Significant Investments Review Bill ("**SIR Bill**") which sets out a new investment management regime over entities designated as critical to Singapore's national security interests ("**Designated Entities**"). The SIR Bill is intended to complement sectoral legislation for monitoring and managing entities in regulated sectors via the following ownership and control safeguards:

(a) investors in a Designated Entity will be required to notify the Minister for Trade and Industry of Singapore ("**Minister**") after becoming a 5% controller, and to seek the Minister's prior written approval before becoming a 12% controller, 25% controller, 50% controller, or an indirect controller;
(b) sellers of interests in a Designated Entity will be required to seek the Minister's prior written approval if they cease to be a 50% or 75% controller;
(c) Designated Entities will be required to seek the Minister's prior written approval for the appointment of key officers, such as the chief executive officer, directors, and the chairperson of the board;
(d) Designated Entities cannot be voluntarily wound up or dissolved without the Minister's prior written consent, and a person seeking to enforce security over the property of a Designated Entity will be required to notify the Minister; and
(e) if the Minister believes it to be in the interest of Singapore's national security or in the interests of the security and reliability of carrying on the business of a Designated Entity, the Minister may make a special administrative order directing that the affairs, business, and property of the Designated Entity be managed by a person appointed by the Minister.

The SIR Bill, which will likely come into effect within a few months, empowers the Minster to designate entities that: (i) are incorporated, formed, or established in Singapore, (ii) carry out any activity in Singapore, or (iii) provide any goods and services to any person in Singapore, as Designated Entities. At present, no Designated Entities have been publicly identified, however, the MTI has reached out to all entities that are being considered for designation under the SIR Bill as a Designated Entity..

2. Lease Agreements for Retail Premises Act 2023

The Lease Agreements for Retail Premises Act 2023 ("**Act**"), which mandates that all qualifying retail lease agreements be compliant with the Code of Conduct for Leasing of Retail Premises in Singapore ("**Code**"), will take effect on 1 February 2024.

The Code was first published in March 2021 by the Fair Tenancy Industry Committee ("**FTIC**"); its key objectives are: (a) to serve as a set of mandatory guidelines to provide guidance to landlords and tenants of qualifying retail premises with the ability to engage in fair and balanced lease negotiations, (b) to provide landlords and tenants of qualifying retail premises with a governance framework to ensure compliance with the Code, and (c) to provide an accessible dispute resolution framework for both landlords and tenants. The Code sets out 11 leasing principles for key tenancy terms, including exclusivity, costs to prepare the lease agreement and third-party costs, advertising and promotion charges and service charges, early termination by landlords due to the landlords' redevelopment work, sales performance (e.g. imposing a stipulated sales target which if not met by the tenant, result in a penalty), material adverse changes, early termination by tenants, security deposits, floor area alterations, building maintenance, and rental formula. An updated version of the Code (Third Edition, 1 November 2023) has been released by the FTIC, and will apply to qualifying leases of retail premises signed on or after 1 February 2024.

The Act requires the landlord and the tenant of a qualifying lease to ensure that all of the provisions of the relevant lease comply with the leasing principles in force at the time the lease agreement is signed by the parties. Where the lease agreement contains a permitted deviation from the leasing principle which are mutually agreed between parties , the landlord must submit a declaration to the FTIC with regard to the relevant deviation. A "qualifying lease" generally means a lease for retail premises for a period of one (1) year of more, or an extension or a renewal of such lease, where the relevant lease agreement, extension, or renewal is signed on or after 1 February 2024.

The Act also establishes a dispute resolution process, and sets out the functions and composition of the FTIC.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

Thailand Authors: Jirapong Sriwat and Apinya Sarntikasem

1. Notifications on Cross-Border Transfers of Personal Data

On 25 December 2023, two regulations governing cross-border data transfers were issued under the Personal Data Protection Act B.E. 2562 (2019) (the "**PDPA**"). The Notification of Personal Data Protection Committee Re: Criteria on the Protection of Cross-Border Transfer of Personal Data Pursuant to Section 28 of the PDPA B.E. 2566 (2023) and the Notification of Personal Data Protection Committee Re: Criteria on the Protection of Cross-Border Transfer of Personal Data Pursuant to Section 29 of the PDPA B.E. 2566 (2023) (collectively, "**Cross-Border Data Transfer Notifications**") were published in the Government Gazette and will enter into force 90 days after the publication date (24 March 2024). Among other things, the Cross-Border Data Transfer Notifications establish (i) criteria for determining whether a destination country or international organization that receives transferred data has adequate data protection standards (namely, whether the measures or legal mechanisms implemented by the destination country or international organization are consistent with the PDPA, and whether there is an agency or organization that is responsible for and empowered to enforce the laws and regulations on the protection of personal data in the destination country or international organization), (ii) the corporate rules for cross-border transfers to entities within the same affiliated business or group of undertakings (i.e., a business in which the business operator has dominance and controlling or management power over, or a business that is under the control of the business operator with dominant power, in the form of a parent company, subsidiary, or associate company, including natural persons or juristic persons who are related by law or joint business operations, based on the criteria set forth in relevant laws and generally accepted accounting principles) that such business operators is obliged to introduce, and (iii) appropriate safeguards for cross-border transfers of personal data (in the absence of a policy or an adequacy decision by the Personal Date Protection Committee] regarding the destination country or international organization that receives the personal data transferred).

2. Tax Exemption on Investments by Individuals in Thailand ESG Fund

Following the establishment of the Thailand ESG Fund ("**TESG**") and for purposes of encouraging investments in sustainable funds for the promotion of environmental, social, and governance (ESG) principles in Thailand, Ministerial Regulation No. 390 B.E. 2566 (2023) ("**Ministerial Regulation on Tax Exemption**"), issued under the provisions of the Revenue Code relating to tax exemptions, was published in the Government Gazette on 8 December 2023. Under the Ministerial Regulation on Tax Exemption, individuals with taxable income earned during the period between 21 November 2023 and 31 December 2032 are eligible for a tax deduction of up to 30 percent of their assessable income, with a maximum limit of Baht 100,000 per tax year, for the purchase of units in any TESG, on the condition that they hold the units for a minimum of eight years from the date of purchase. Individuals who do not comply with the aforementioned conditions will not be entitled to receive the tax exemption for the purchase of units in TESG.

3. Guidelines on the Management of Sewage or Waste Materials

The Notification of the Ministry of Industry Re: Management of Sewage or Waste Materials B.E. 2566 (2023) was published in the Government Gazette on 31 May 2023 and entered into force on 1 November 2023 (except for Clause 13 and Clause 22, which already entered into force on 1 June 2023) ("**Notification of the MOI**"), and is applicable to factory operators identified in the ministerial regulations issued under the Factory Act B.E. 2535 (1992), as amended. The Notification of the MOI sets out the proper procedures for handling and disposing of sewage or waste materials within factory premises, for example, by requiring the factory operator (that generates the sewage or waste materials) to separate hazardous and non-hazardous waste, conduct inspections and put labels (containing certain details, such as the name and code or type of sewage or waste material, etc.) on sewage or waste material containers, and to seek permission to transport sewage or waste material out of factory premises, among other requirements.

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NISHIMURA & ASAHI

Vietnam
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1. Law No. 27/2023/QH15 on Housing ("New LOH")

On 27 November 2023, the New LOH was adopted, which shall take effect on 01 January 2025. Among others, the New LOH has resolved some notable practical issues arising from the Law on Housing 2014 (as amended) ("**LOH 2014**"), particularly:

(i) *Flexible options to realize social-housing-related obligations of developers:* Currently, developers for certain big-scale commercial housing and urban area construction investment projects are required to allocate 20% of their project land with technical infrastructure completed for social housing development. The New LOH newly introduces some alternatives for the provincial-level People's Committee ("**PC**") to decide to impose on the developers on case by case basis one of: (1) to set aside residential land area with technical infrastructure completed in the project to build social housing; (2) to arrange other land area with technical infrastructure completed in other location for the social housing; or (3) to pay an amount of money equivalent to the value of the land area with technical infrastructure completed for purposes of constructing social housing.

(ii) *Confirming more capital source for commercial housing projects*: Currently, it is arguable and uncertain whether it is legal for a commercial housing developer to issue bonds to mobilize capital for project development. The New LOH supplements forms of capital mobilization for commercial residential housing projects, which include, among others, capital mobilized through the issuance of bonds, stocks, and fund certificates in accordance with laws and regulations. Thus, it now is clear that commercial residential housing developers are allowed to issue bonds to mobilize capital for project development purpose.

2. Law No. 29/2023/QH15 on Real Estate Business ("New LOREB")

On 28 November 2023, the New LOREB was adopted, which shall take effect on 01 January 2025. Below are several significant changes introduced by the New LOREB related to investors that are foreign-invested enterprises ("**FIE**"):

(i) *FIEs Regulated in Different Groups:* Currently, all FIEs, regardless of their foreign capital ownership ratio, are subject to the same strict restrictions on real estate business scope. Under the New LOREB, FIEs are categorized into two groups: (i) Group 1: FIEs subject to conditions and procedures applicable to foreign investors under investment laws, and (ii) Group 2: FIEs other than those mentioned in Group 1.

(ii) *Relaxation of scope of real estate business conducted by FIEs:* The New LOREB allows Group 2 FIEs, which are mainly FIEs with 50% or less foreign ownership and their subsidiaries, to enjoy the same treatment as domestic entities in this field. This means no restriction on the scope of real estate business will be imposed on the Group 2 FIEs. The New LOREB also relaxes limits on the real estate business scope for Group 1 FIEs, permitting them to sell land lots in a real estate project with completed infrastructure to individuals, households for their own construction or lease/sublease of land lots in a real estate project with completed infrastructure to individuals, or organizations for their lawful uses; and also lease certain construction floor areas in buildings for sublease.

(iii) *Deposits for off-the-plan real estate:* The New LOREB prohibits the collection of more than 5% of the off-the-plan buildings sale price as deposits and requires a written deposit agreement between developers and purchasers with some statutory contents and prohibition of any proxy to execute it. The deposit arrangement is not regulated by the current LOREB and this is the first time this matter is dealt with.

3. Law No. 24/2023/QH15 on Telecommunications ("New Telecoms Law")

On 24 November 2023, the New Telecoms Law was promulgated, which shall take effect on 01 July 2024. Among others, the New Telecoms Law has expanded its scope to regulate three new services, including Over-the-top (OTT) communications, data centers, and cloud computing services ("**New Services**"), which were not covered by the current telecoms law, with some notable points as summarized below:

(i) *Foreign capital ownership limit on the New Services:* Although the literal language of the law is not crystal clear, the New Telecoms Law specifies that there is no foreign capital ownership limit applicable to foreign investors investing in the New Services in Vietnam. In other words, it can be understood that foreign investors may establish a wholly foreign-owned company in Vietnam doing business in the New Services.

(ii) *Obligations of providers of the New Services:* The New Telecoms Law imposes a number of obligations on the providers of the New Services in Vietnam. Among others, providers of the New Services are obliged to comply with registration or notification procedures with the competent authority. The specific procedure applied to each New Service will be prescribed in a decree to be enacted by the Government.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

India Authors[1]: Taeko Suzuki and Isha Shah

1. Guidelines for Prevention and Regulation of Dark Patterns

The Central Consumer Protection Authority ("**CCPA**") notified the Guidelines for Prevention and Regulation of Dark Patterns, 2023 ("**Guidelines**") on 30 November 2023. The Guidelines apply to platforms systemically offering goods or services in India, advertisers, and sellers, and prohibits any person, including platforms, from engaging in dark patterns. "Dark patterns" refer to any practice or deceptive design pattern using User Interface (UI) or User Experience (UX) interactions designed to mislead users into doing something they originally did not intend on a platform, by subverting consumer autonomy and decision making, resulting in misleading advertisement, unfair trade practices or violation of consumer rights. In December 2023, the CCPA issued notices under the Guidelines to 20 coaching institutes for misleading advertisements and imposed penalties on eight such institutes, as well as Amazon, alleging utilization of dark patterns to deceive customers into subscribing to Prime memberships.

2. Haryana amnesty scheme

On 30 December 2023, the Government of Haryana announced the Haryana One Time Settlement Scheme for Recovery of Outstanding Dues, 2023 ("**Scheme**") *vide* Notification No. 71/ST-1 for settlement of outstanding dues up to the period of 30 June 2017 under specified Acts *viz.* (i) The Haryana Value Added Tax Act, 2003; (ii) The Central Sales Tax Act, 1956; (iii) The Haryana Local Area Development Tax Act, 2000; (iv) The Haryana Tax on Entry of Goods in to Local Areas Act, 2008; (v) The Haryana Tax on Luxuries Act, 2007; (vi) The Punjab Entertainment Duty Act, 1955; and (vii) The Haryana General Sales Tax Act, 1973.

Key points include:

(i) <u>Duration of the Scheme</u>: The Scheme came in force 1 January 2024 and an applicant may opt for the same within ninety days i.e., until 31 March 2024.

(ii) <u>Eligibility</u>: Applicants against whom criminal proceedings have been initiated or cases involving demand relating to erroneous refund under the specified acts may not opt for the Scheme.

3. Supreme Court judgment on Group of Companies Doctrine in arbitration agreements

On 6 December 2023, the Indian Supreme Court, in *Cox & Kings Ltd.* ("**Cox**") *v. SAP India (P) Ltd.*[2] ("**SAP**"), affirmed that a non-signatory party can be bound by an arbitration agreement under the '*group of companies*' doctrine ("**Doctrine**") if certain conditions are satisfied. The Court held, *inter alia*, the following:

(i) <u>Consent of parties</u>: consent forms the cornerstone of arbitration agreements. Non-signatories, who are within a group of companies, may be bound by an arbitration agreement entered into by its affiliate, if the mutual intent of the parties (i.e. signatory and non-signatory) to be bound by such agreement can be established. The Court further held that this was not an extension of the agreement to third parties but a process to identify the real or veritable parties to the dispute;

(ii) <u>Doctrine and its application</u>: the Doctrine rests on maintaining the separateness of group companies, and is a means of determining the true intention of parties to bind the non-signatory to the arbitration agreement by identifying their corporate affiliations. Whether a non-signatory entity intended to be bound to the arbitration agreement would be based on: (a) the mutual intent of the parties; (b) relationship between the signatory and non-signatory parties; (c) commonality of the subject-matter; (d) composite nature of the transactions; and (e) performance of contract; and

(iii) <u>Determination</u>: whether the non-signatory is bound by the arbitration agreement should be decided by the arbitral tribunal at the referral stage.

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[1] We hereby thank for support by Ms. Akanksha Dikshit from Economic Laws Practice, a law firm in India, in preparation of this article.

[2] 2023 INSC 1051

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Myanmar

Author: Saw Nyan Htun

1. Entry Into Force of Industrial Design Law and Copyright Law

The State Administration Council ("**SAC**") issued two notifications (Notification No. 217/2023 and Notification No. 218/2023) on October 18, 2023 relating to enforcement of the Industrial Design Law and the Copyright Law. Both statutes came into force on October 31, 2023. The Ministry of Commerce ("**MOC**") issued rules on the Industrial Design Law on September 29, 2023 (Notification No. 67/2023) and rules on the Copyright Law on October 23, 2023 (Notification No. 70/2023). Those rules stipulate detailed procedures in relation to registration of rights, such as applying for, recording transfers of, and cancelling registrations, etc. of rights. Subsequently, the MOC issued a series of prescribed forms for registration of industrial designs in Myanmar. Moreover, on October 27, 2023, the Supreme Court of Myanmar ("**SC**") issued procedures for adjudication of copyright and industrial design–related cases (Notification No. 960/2023 and Notification No. 973/2023). The SC also issued a series of notifications regarding the competent courts for adjudication of copyright and industrial design–related cases.

Currently, the Department of Intellectual Property, a department under the MOC, is organizing a series of training sessions for representatives who are filing for registration of trademarks via the WIPO filing system, which will be followed by training sessions on registration of industrial designs in Myanmar.

2. CBM Amended Foreign Exchange Regulations

The Central Bank of Myanmar ("**CBM**") relaxed from 50% to 35% the percentage of export earnings that must be converted into Myanmar kyat on a compulsory basis, pursuant to Notification No. 26/2023 dated December 6, 2023. The CBM also issued Notification No. 27/2023 dated December 25, 2023, which addresses the period for repatriating export earnings. Notification No. 27/2023 mandates repatriation of export earnings within 30 days (for exports to Asian countries) or 60 days (for exports to non-Asian countries), a change from the previous deadlines of 45 days (for exports to Asian countries) or 90 days (for exports to non-Asian countries). Noncompliance with these regulations is subject to the actions set forth in the Foreign Exchange Management Law.

3. New SOP to Crack Down on Online Fraud

The SAC issued the Notification on Standard Operating Procedures ("**SOP**") for seeking information, investigating, and taking action to prevent and protection against financial fraud via telecommunications networks on October 15, 2023 (Notification No. 216/2023). This SOP applies to mobile financial service providers, banks, the CBM, and concerned ministries. The key provisions of the SOP are as follows:

1. The CBM must supervise and scrutinize mobile financial service providers, including recording the number of mobile financial service providers, recording information on persons involved in transactions, and supervising the security measures of mobile financial service providers and relevant banks.
2. Relevant ministries must scrutinize and supervise foreigners entering into and residing in Myanmar, including on-site inspections to check visa information and other related information.
3. The CBM and mobile financial service providers must scrutinize the particulars (i.e., passports, visas, etc.) of foreigners who open bank accounts and/or mobile financial accounts.
4. The CBM must supervise wire transfer transactions between local and foreign banks to determine whether they are in compliance with AML/CFT measures.
5. Mobile financial service providers must conduct KYC checks and report any suspicious transactions to the Financial Intelligence Unit.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

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

1. Threshold for Reporting Obligations of Substantial Shareholders to be Lowered in May 2024

Substantial shareholders of a public company that meet the threshold set forth in Article 43-1 of the Securities Exchange Act are obligated to disclose and report their acquisitions of shares, or subsequent changes to the number of shares held, to the Securities and Futures Bureau of the Financial Supervisory Commission (the "**Reporting Obligation**"). The threshold for the Reporting Obligation was amended in mid-2023, and the changes will come into effect on 10 May 2024. The following are some key takeaways about the amendment and the Reporting Obligation:

(i) The Reporting Obligation: What to Report

According to paragraph 1 of Article 43-1 of the Securities Exchange Act, any person who, either individually or jointly with other persons, acquires more than 5% of the total issued shares of a public company (an "**Acquirer**") shall report the acquisition and make a public announcement; the same applies when there is any change to the specifics reported. The specifics of the report include the identity of the Acquirer, the number of shares acquired, the method, date, and purpose of the acquisition, details about the source(s) of funds, plans to exercise share rights, and other specified information.

(ii) Threshold for the Reporting Obligation: Lowered from 10% to 5%

Before the amendment, the threshold for the Reporting Obligation was 10%. However, starting on 10 May 2024, shareholders that hold more than 5% of the shares of a public company will be subject to the Reporting Obligation. In addition to the lowering of the threshold, fines for failure to report have been increased also. Failure to report will be subject to a fine of NT $300,000 to NT $6,000,000, starting on 10 May 2024 when the amendment comes into effect.

(iii) Reporting Method: Reports Will be Required to be Filed Electronically

Before the amendment, reports had to be filed in hard copy (paper) form. However, starting on 10 May 2024, filing in paper form will no longer be acceptable, and reports will be required to be filed electronically. Public companies in Taiwan have access to the Market Observation Post System ("**MOPS**") and therefore may utilise MOPS to file the report. However, the filing functions of MOPS are not accessible to shareholders that do not publicly issue shares in Taiwan. These shareholders will be required to fulfil their Reporting Obligations by filing a report via the public company in which they acquire shares. The Reporting Obligation is deemed fulfilled once the report is filed on MOPS.

2. Minimum Wage Act Passed by Legislative Yuan

The Legislative Yuan, the legislative body of Taiwan, passed the Minimum Wage Act (the "**MWA**") in December 2023. The MWA is expected to come into effect in 2024. According to the MWA, a Minimum Wage Revision Committee, which will be formed by representatives of labour, the government, management, and scholars, will gather during the third quarter of every year to decide on the minimum monthly and hourly wages to be implemented for the following year, and the committee is required to take the consumer price index into account when deciding the minimum wage.

According to the MWA, wages agreed upon by employers and workers must not be lower than the minimum wages in effect at the relevant time. If wages agreed-upon are lower than the effective minimum wages, the minimum wages in effect will be deemed to be the relevant worker's wages, and the employer will be punished with an administrative fine of NT $20,000 to NT $1,000,000, which may be increased by 50% depending on the degree of the violation or the scale of the business. Fines will be imposed on a consecutive basis if improvements are not made within a time limit at the discretion of the competent authority. In addition, the names of violators will be publicised.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

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1. Circular on intermediaries engaging in tokenised securities-related activities on 2 November 2023 (“Tokenised Securities Circular”)

The Tokenised Securities Circular issued by the Securities and Futures Commission (“**SFC**”) will help to clarify regulatory expectations for intermediaries engaged in tokenised securities-related activities. The following are some of the major regulatory expectations as mentioned in the Tokenised Securities Circular:

(i) **Considerations for engaging in tokenised securities-related activities**

(a) Issuance of tokenised securities

Where intermediaries are substantially involved in the issuance of tokenised securities, they remain responsible for the overall operation of the tokenisation arrangement notwithstanding any outsourcing to third-party service providers.

(b) Dealing in, advising on, or managing portfolios investing in tokenised securities

Where intermediaries deal in, advise on, or manage portfolios investing in tokenised securities, they are reminded to conduct due diligence on the issuers and their third-party service providers involved in the tokenisation arrangement.

(ii) **Information for clients**

Intermediaries should make adequate disclosure of relevant material information specific to tokenised securities and communicate such information in a clear and easily comprehensible manner.

(iii) **Clarifications on the SFC’s Statement on Security Token Offerings on 28 March 2019 (“Statement”)**

Although the SFC previously imposed a “professional investor-only” (“**PI-only**”) restriction on the distribution and marketing of security tokens in the Statement, the SFC has changed its view, and has stated that there would be no need to impose a mandatory PI-only restriction. However, tokenised securities that have not complied with the prospectus regime under the Companies (Winding Up and Miscellaneous Provisions) Ordinance or the offers of investments regime under Part IV of the Securities and Futures Ordinance (“**SFO**”) only can be offered to professional investors.

2. Circular on tokenisation of SFC-authorised investment products on 2 November 2023 (“Investment Products Circular”)

The Investment Products Circular sets out the SFC’s requirements for considering allowing tokenisation of investment products authorised under Part IV of the SFO for offering to the public in Hong Kong. The following are some of the major requirements as mentioned in the Investment Product Circular.

(i) **Tokenisation arrangement**

Product providers of tokenised SFC-authorized investment products (“**Product Providers**”) should:

(a) be ultimately responsible for the management and operational soundness of the tokenisation arrangement;
(b) ensure that proper records of token holders’ ownership interests in the product are maintained;
(c) have appropriate measures to manage and mitigate cybersecurity risks, data privacy, system outages, etc.;
(d) not use public-permissionless blockchain networks without additional and proper controls;
(e) upon the SFC’s request, obtain a third-party audit or verification of the tokenisation arrangement; and
(f) upon the SFC’s request, obtain a satisfactory legal opinion to support its application.

(ii) **Disclosure**

The offering documents of a tokenised SFC-authorised investment product should set out clearly:

(a) the tokenisation arrangement, with clear disclosure on whether off-chain or on-chain settlement is final;
(b) the ownership representation of the tokens; and
(c) the associated risks with the tokenisation arrangement such as cybersecurity, system outages, etc.

(iii) **Intermediaries**

Product Providers who distribute their own products should be regulated intermediaries such as SFC-licensed corporations or registered institutions.

(iv) **Staff competence**

Product Providers should have at least one competent staff member with relevant experience and expertise to operate and/or supervise the tokenisation arrangement and to manage the new risks.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

United Arab Emirates Authors: Ayush Sharma and Suguru Kuroda

New Federal Law on Regulation of Competition

Federal Law 36 of 2023 on the Regulation of Competition (the "**New Competition Law**") came into effect on December 28, 2023 and abrogated and replaced Federal Law 4 of 2012 (the "**Old Competition Law**"). A few key changes introduced by the New Competition Law are set out below:

(i) **Scope**: The New Competition Law applies not only to all entities engaging in Economic Activities that take place in the UAE, but also to Economic Activities that take place outside the UAE and have an effect on the UAE market. In addition, the New Competition Law introduces a new, broader definition of "Economic Activities", which includes every activity primarily related to production, distribution, and provision of products and goods, and performance of services in the UAE .

(ii) **Changes to the exemptions:** Under the Old Competition Law, certain sectors (e.g., telecommunications, oil & gas) were exempt from the application of the Old Competition Law. In contrast, the New Competition Law contains an exemption applicable to any agreement, practice, or action related to a specific good or service that is regulated by a different authority and law, provided that such other law governs the antitrust aspects of the relevant sector. Therefore, each company will need to review the laws applicable to its sector to verify whether those laws include specific antitrust provisions under which the company qualifies for any exemption under the New Competition Law. It also is worth noting that while the Old Competition Law contained an exemption for small and medium-sized enterprises, this exemption is not provided under the New Competition Law.

(iii) **Clarification of meaning of "Relevant Market"**: The New Competition Law clarifies and expands the definition of "Relevant Market," which now includes a "digital place" where supply and demand converge for a product or service and where competition conditions are similar or homogeneous. This was limited to "geographical locations" under the Old Competition Law.

(iv) **Criteria for notification to regulator**: Under the Old Competition Law, it was necessary to submit an application to the regulator if a proposed economic concentration between two parties resulted in the combined market share of such parties exceeding 40% of the total transactions in the "Relevant Market". Under the New Competition Law, whether or not a notification is required in regard to a proposed economic concentration is determined on the basis of turnover, or resultant market share of the economic concentration during the last fiscal year in the "Relevant Market", as applicable . In addition, under the New Competition Law, notification of economic concentration must be now submitted 90 days prior to completion of the economic concentration, compared to the 30-day period required under the Old Competition Law.

(v) **Penalty for obstructing employees:** In addition to monetary fines for violations of various provisions of the New Competition Law, penalties ranging from AED 50,000 (approximately USD 13,600) to 500,000 (approximately USD 136,000) may be levied against any person who prevents employees from performing their assigned duties in accordance with the provisions of the New Competition Law.

(vi) **Implementing Regulations:** Several articles of the New Competition Law refer to the implementing regulations for more details on how the new regime will operate. While the implementing regulations have not been issued yet, they are expected to be issued within the next six months.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

Japan Authors: Hiroki Kaga and Aya Okada

1. Promulgation of the Act Partially Amending the Financial Instruments and Exchange Act, etc.("Amendment Act"): Abolition of Quarterly Securities Report

The Amendment Act was enacted at the 212th Extraordinary Session of the National Diet on 20 November 2023, and was promulgated on 29 November 2023(Act No. 79 of 2023).The Amendment Act mainly provides the establishment of systems related to customer-oriented business conduct and financial literacy, and the revision of systems related to corporate disclosure, in order to respond to environmental changes such as digitalization and to contribute to the improvement of convenience and protection for customers of financial services and others. The following is an overview of the abolition of the Quarterly Securities Report.

In June 2021, the Financial System Council, in response to the request from the Minister for Financial Services, established the Disclosure Working Group on Corporate Disclosure(“**DWG**”) to deliberate on how the corporate disclosure should be made, and in June and December 2022, the DWG published its report summarizing the results of its deliberations. In the report, DWG pointed out that (i) non-financial information related to medium-to-long-term corporate value, such as sustainability, and (ii) information that companies publish from time to time through various channel, have become increasingly important for investors in their investment decisions in light of recent changes in economic and social circumstances. At the same time, DWG mentioned that Quarterly Securities Reports (for the first and third quarters) under the Financial Instruments and Exchange Act (“**FIEA**”) and Quarterly Earning Reports under the Exchange Rules should integrate from the perspective of reducing costs and improving disclosure efficiency since there is some overlap between the two. Accordingly, the report in December of the same year proposed that the FIEA should promptly be revised in order to abolish the Quarterly Securities Report (for the first and third quarters).

In response, the Amendment Act makes the following amendments:

- For listed companies, the frequency of disclosure is reduced from every 3 months to every 6 months (**abolition of the Quarterly Securities Report**), and are **required to submit Semi-annual Securities Reports** instead of Quarterly Securities Reports.
- **Extension of the period for the public to inspect of Semi-annual Securities Reports and Extraordinary Reports to 5 years.**

The amendments above will come into effect on 1 April 2024, but transitional measures are provided. According to the transitional measures, for example, in the case of a listed company whose fiscal year ends in December, the First Quarterly Securities Report for the fiscal year beginning on January 1 of 2024 shall be submitted under the provisions of FIEA prior to amendment by the Amendment Act("**Former Act**"), and after the second quarter, a Semi-annual Securities Report under the Amended Act is required. In the case of a listed company whose fiscal year ends in March, it will not be required to submit a Quarterly Securities Report under the Former Act from the fiscal year beginning on April 1 of 2024, but will be required to submit a Semi-annual Securities Report under the Amendment Act.

In response to the amendments above, the Financial Services Agency(“**FSA**”) published the draft "Cabinet Orders and Cabinet Office Orders Pertaining to the Amendments to the Financial Instruments and Exchange Act, etc.," (“**Proposal**”) on 8 December 2023 (see 2 below). Further, Tokyo Stock Exchange, Inc. published the “Practical Policy Concerning the Revision of the Quarterly Disclosure System” on 22 November 2023, and the revision of the Exchange Rules and the Timely Disclosure Guidebook, including the guidelines for preparing Earnings Reports based on the policy, is scheduled ahead.

2. Publishment of the Proposal from FSA

FSA published the Proposal on 8 December 2023. The main amendments are: (i) development of regulations related to Semi-annual Securities Reports to be submitted by listed companies, (ii) to add cases which require for the filing of the Extraordinary Report (e.g. agreement between the company and shareholder relating to disposal or additional purchase of shares, or those relating to the corporate governance), (iii) development of regulations related to Interim Financial Statements included in Semi-annual Securities Reports, and (iv) other necessary amendments. These amendments are scheduled to be promulgated and enforced (1 April, 2024) after the completion of public comments and other necessary procedures. In the amendments, transitional measures are scheduled to be established for the application of the provisions related to the format of Securities Reports, etc.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

Bangladesh Authors:[3] Varsha Bhattacharya and Makoto Sugitani

1. Appointment of Independent Directors Subject to Regulatory Approval

The Bangladesh Securities and Exchange Commission ("Commission") issued a notification on 16 October 2023 to regulate the appointment of listed company independent directors. The notification prescribes that a minimum of two (2) in number or one-fifth (1/5) in strength of the directors, whichever is higher, must be independent, as prescribed under applicable laws, and that all listed companies require prior approval by the Commission before appointing an independent director.

2. Amendment of Bangladesh Economic Zones Act, 2010

The Bangladesh Parliament passed the Bangladesh Economic Zones (Amendment) Act, 2023, amending the Bangladesh Economic Zones Act, 2010 with effect from 13 November 2023. The amendments have been made primarily to streamline the creation of economic zones in Bangladesh through partnerships with other countries. Before this amendment, creation of economic zones within the city corporation, municipality and cantonment board areas was restricted.

3. New Customs Act, 2023

The Bangladesh Parliament passed the Customs Act, 2023 on 31 October 2023 to replace the Customs Act, 1969. The new Act, when notified, aims to update the old law to align it with international customs practices. It provides for increased transparency through reduced discretion of customs officials by prescribing standard operating procedures, and a system of advanced rulings to provide certainty to businesses. It also incorporates provisions to curb money laundering and terror financing.

4. New Finance Companies Act, 2023

The Bangladesh Parliament passed the Finance Companies Act, 2023, repealing the Financial Institutions Act, 1993 with effect from 13 November 2023.

Some key prescriptions under the new law are:

(i) Foreign investors must obtain approval from the Bangladesh Bank to purchase shares in Non Banking Financial Institutions ("NBFI");

(ii) Penalties and punishments for non-compliance in some cases have been increased;

(iii) NBFI can have a maximum of fifteen (15) directors with a minimum of two (2) independent directors, and maximum two (2) may be members of the same family; and

(iv) No person, individually or along with related parties, or members of the same family, may individually or jointly own more than fifteen percent (15%) of the shares of an NBFI.

[3] We hereby thank for support by Ms. Shimu Kamrunnaher from Rahman's Chambers, a Bangladesh law firm, in preparation of this article.

Ⓒ Nishimura & Asahi (Gaikokuho Kyodo Jigyo) 2024

Sri Lanka Authors:[4] Taeko Suzuki and Akihiro Kawashima

1. Enforcement Status of the New Personal Data Protection Law

On March 19, 2022, the Personal Data Protection Act No. 9 ("PDPA") was passed, regulating the processing of personal data, the rights of data subjects with respect to personal data protection, and establishing the data protection authority. Prior to the enactment of the PDPA, there were industry sector-specific laws addressing data protection, however, there was no specific comprehensive data protection law in Sri Lanka. The Sri Lankan government has positioned the PDPA to establish a robust framework for personal data protection in the digital age, protecting citizens' privacy and promoting trust in the digital ecosystem.

On July 21, 2023, the Sri Lankan government commenced enforcement of Part V (Data Protection Authority) of the PDPA, and seven individuals with expertise in the fields of engineering, accounting and finance, law and regulatory affairs were appointed as members of the Board of Directors, which will function as a body in charge of the administration and management of the Data Protection Authority.

The other provisions of the PDPA regarding the administration and management sections, such as Part VI (Director General and Staff of the Authority), Part VIII (Fund of the Authority), Part IX (Miscellaneous) and Part X (Interpretation) came into force on December 1, 2023. Further, the provisions regarding the substantive sections of the PDPA, such as Part I (Processing of Personal Data), Part II (Rights of Data Subjects), Part III (Controller and Processors), and Part VII (Penalties) are announced to come into force on March 18, 2025. The enforcement date of Part IV (Use of Personal Data to Disseminate Solicited Messages) has not been announced.

The Data Protection Authority also plans to conduct public consultations and discuss with advisory committees representing key sectors of the economy and other stakeholders.

2. Status of Deliberations on a New Employment Act

Sri Lanka is aiming to consolidate existing multiple labour-related laws into a new employment act to facilitate investment from domestic and foreign investors and to adjust industrial relations. The Ministry of Labour and Foreign Employment and the advisory committees have been deliberating the new employment act, and also various stakeholders, including representatives from the private sector and trade unions, have been providing public comments.

The new employment act will unify existing labour-related laws, including the Trade Unions Ordinance, 1935, Factories Ordinance, 1942, Industrial Disputes Act, 1950, Shops and Offices (Regulation of Employment and Wages) Act, 1954, and the Termination of Service Act, 1971. The new act also contains important items such as the prevention of discrimination in employment and the workplace, the introduction of flexible working hours, and provisions for parental leave, aiming to strengthen workers' rights, workplace safety and fair employment practices.

On the other hand, the new act also includes provisions that restrict the prior and existing rights of workers, such as increasing the minimum number of members required to establish a new trade union from 7 to 100, and in certain industries, allowing employers to have employees work twelve (12) hours a day without paying any overtime allowance. As there are arguments opposing these proposals from the workers' side, attention must be paid to their future trends.

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[4] We hereby thank for support by Ms. Hansi Abayaratne from D.L. &F. De Saram, a law firm in Sri Lanka, in preparation of this article.

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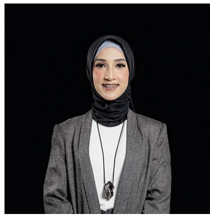

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