



LEGAL DIGEST: BANGLADESH, CAMBODIA, LAOS, MYANMAR, VIETNAM

Legislative developments - February 2022

LAWS AND REGULATIONS

Banking & Finance

*Circular No. 01, Foreign Exchange Investment Department, Bangladesh Bank, dated 26 January 2022 on “Capital Account Transaction (Equity Investment Abroad Rules 2022)”*

The central bank has published a gazette notification on capital account transactions (**Equity Investment Abroad Rules 2022**) permitting Bangladeshi businesses to invest equity abroad from their export retention quota accounts.

Countries that have bilateral capital investment, development, expansion, and conservation agreements and double taxation treaties with Bangladesh will be prioritized for Bangladeshi investment proposals.

Bangladeshi applicant companies are required to be financially solvent as indicated by their audit reports for the past five years. These applicants will be able to invest 20% of the average annual export earnings of the organization for five years or less than 25% of the net assets as shown in the latest financial report of the company. Any Bangladeshi applicant company that wants to set up a subsidiary company abroad is required to apply to Bangladesh Bank through an authorized dealer (“AD”) bank with all the required documents mentioned in this rule.

The Equity Investment Abroad Rules 2022 state that a selection committee chaired by the governor of Bangladesh Bank and 14 other members from different governmental organizations has been set up to check the applications. The committee will notify the AD as well as the applicant company regarding the result of the application. With regards to due diligence for a Bangladeshi company setting up a company abroad, it is advised to consult the Guidelines for Foreign Exchange Transactions 2018 and subsequent circulars.

The Equity Investment Abroad Rules 2022 are aimed at expanding business in the global market for Bangladesh.

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E-commerce and TMT

*The Ministry of Information and Broadcasting published the draft of “OTT Regulation 2021” on 3 February 2022*

Over The Top (“OTT”) platforms that offer digital content directly to viewers through their websites or applications are currently unregulated in Bangladesh. There are a dozens of local OTT platforms along with major international OTT platforms in the country.

According to this regulation, OTT platforms are required to register with the relevant registration authority to operate in Bangladesh. Application and registration fees are based on whether it is a local or foreign OTT. Upon receipt of the application, the Ministry of Information and Broadcasting as well as the Ministry of Home affairs will scrutinize the application and inform applicants to pay the registration fees in the event that their application is successful. The tenure of the registration is primarily for three years, and can be renewed after expiration.

In addition, this regulation also mentions certain obligatory rules that OTT platforms are required to follow. Any Bangladeshi individual or company, individually or jointly, as well as any foreign company can be the owner of an OTT platform in Bangladesh. All OTT platforms are also required to register as a company under the Company Act 1994 in Bangladesh.

*PSD circular No. 04/2022, Payment System Department, Bangladesh Bank, dated 15 February 2022 on “Bangladesh Mobile Financial Services (MFS) Regulations 2022”*

Bangladesh Bank has issued the Bangladesh Mobile Financial Services (MFS) Regulations 2022, which has replaced the Bangladesh MFS Regulation 2018.

Previously Mobile Financial Services (“MFS”) companies could only be formed as a subsidiary of any scheduled commercial bank of Bangladesh. However, according to the new regulation, any Financial Institution (“FI”) licensed by Bangladesh Bank and any government entity will also be allowed to form a subsidiary MFS company where the parent bank, FI (Financial Institution), or government entity shall hold at least 51% equity of the MFS company.

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According to the new regulation, for the subsidiary model-based MFS, any new licensee is required to have a minimum of BDT450 million as paid-up capital. In addition, a capital reserve equivalent to the paid-up capital will also have to be built up gradually from the profit to mitigate the risks.

According to the World Bank's Global Findex 2017, only 50% of Bangladeshi citizens had mobile banking and/or financial institution accounts as of 2017, of which only 21.2% have mobile money accounts. Mobile Financial Services are effectively contributing towards the financial inclusion and socioeconomic advancement of the country. At present, there are 12 to 15 MFS providers in Bangladesh and many unbanked populations. As such, this new regulation is set to open a window of opportunity for FIs & non-banking financial institutions in the financial services sector.

Logistics

*The government of Bangladesh enacted a new rule titled the "Alcohol Consumption Rules 2022," dated 5 February 2022*

The Bangladesh Ministry of Home affairs published a new rule named the "Alcohol Consumption Rules 2022" to regulate the sales, marketing, import-export, storage, production, processing, and consumption of alcohol. Notable guidelines include the following:

- According to the rules, people below the age of 21 are not allowed to consume alcohol.
- Licences, permits, and renewal fees have been revised.
- Foreign remittance earners' duty-free shops are allowed to import alcohol by paying a duty tax.
- Three units of alcohol can be sold at a time, and seven units can be sold per month to permit holders.
- The authorities are able to issue licences to 100 local and foreign liquor permit holders.
- To obtain a licence to sell alcohol, restaurants or clubs are required to provide evidence of at least 200 members who have licences to consume alcohol.
- Hotels ranked five stars and higher will be able to obtain a license to set up seven bars.

As highlighted by the above updates, the rules contain various restrictions and guidelines for permit holders.

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*Bangladesh National Board of Revenue (NBR) sets a new rule named “Provisional Import Rules on Return of Goods, Equipment, Parts and Equipment, 2022” dated 27 January 2022.*

The Bangladesh Customs wing of the National Board of Revenue (“NBR”) has set a new rule for returning machinery that has been temporarily imported for large-scale projects, enabling the implementing authorities of different projects to use duty-free machinery, equipment, and spare parts for multiple projects. The time allowed for returning the temporarily imported machinery could be extended upon approval by providing a valid reason to the authority. According to this rule, machinery cannot be used for another project or purpose; the importer is required to provide an undertaking on Non-Judicial Stamp on this issue. However, machinery may also be used by amending the bank guarantee with the consent of the project director and NBR. The importers will be required to provide an unconditional bank guarantee equivalent to the applicable duty taxes of the imported machinery, spare parts, and equipment. Initially, Customs commissioners will allow one year for returning temporarily imported products, which can be extended by six months by application to the authority.

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Commercial Law

*Royal Decree No. NS/RKM/0122/003 dated 29 January 2022 of the Kingdom of Cambodia “Amending the Law on Commercial Enterprises”*

Key changes are as follows:

- Introduction of a new legal form of sole proprietorship.
- Requirement that the liquidator of a general partnership or limited company must be an accounting or audit company licensed by the Accounting and Auditing Regulator of the Non-Banking Financial Services Authority.
- Amendment of the time period that a liquidator is obligated to maintain the books and records of a general partnership from 10 to 5 years from the completion of the liquidation.
- Requirement for a limited company to appoint a company secretary, whose duties include the maintenance of the corporate records and the execution, to some extent, of acts on behalf of the company. The company secretary must be a physical person who is a permanent resident of the Kingdom of Cambodia.
- Clarification of the criteria to determine the nationality of a company based on the percentages of the voting shares stipulated in the articles of incorporation.
- Removal of paragraph 1 of Article 144 on the required minimum number of shares in the case where the articles of incorporation fail to provide the number of shares.
- Introduction of a new concept called a “domestic branch” to distinguish between the domestic branch of a partnership or limited company and the branch of a foreign entity.

*Royal Decree No. NS/RKM/0122/002 dated 29 January 2022 of the Kingdom of Cambodia “Amending the Law on Commercial Rules and Register”*

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This law amends the Law on Commercial Rules and Register (“LCRR”), which was promulgated in 1995 and amended in 1999. It amends Article 47 of the 1995 LCRR and Articles 11-New, 14-New, 17-New, 26-New of the 1999 amended LCRR.

The key amendments are as follows:

- Requirement for business owners to provide a declaration with their signature or thumbprint upon registration that includes information such as: name, ID number, date of birth, address, phone number or email address, and business objectives (as per the Cambodia Standard Industrial Classifications).
- Upon initial registration of an entity, the Ministry of Commerce will now issue a one-month provisional certificate of incorporation and extract containing the business registration number. If during the provisional period, if it is found that a declaration is fake or the information provided is fraudulent or there is a complaint, the Ministry of Commerce can reject the registration and delete the business registration number from the commercial registration list.
- Obligation of all business owners and commercial enterprises to implement the accounting and auditing rules in accordance with the Law on Accounting and Auditing and the relevant applicable regulations.

Trusts

*Prakas No. 003 FSAProkor dated 26 January 2022 issued by the Non-Banking Financial Services Authority on “Rules on the Management, Establishment, and Functioning of Trusts”*

This Prakas sets out the rules, conditions, and procedures for the establishment of trusts, their registration, as well as the licensing and approvals granted to trustees. It also clearly defines trust activity, and specifies the rules to qualify as a trustee (both individual trustees and trustee companies), trustees’ obligations and responsibilities, as well as the rules on the management of trustees and custodians in the securities sector.

Construction

*Prakas No. 013 DNS/Pr.K/Ni.K dated 20 January 2022 issued by the Ministry of Land Management, Urban Planning, and Construction on “the Procedures and Conditions for the Issuance of Construction Permits”*

This Prakas sets out standard procedures to apply for construction permits issued by the Ministry of Land Management, Urban Planning, and Construction (“MLMUPC”). It provides clear detailed information on the required documents and procedural flow to apply for new construction



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permits as well as renewals. It is important to note that this Prakas applies only to construction that falls into the categories that require permits from the MLMUPC as specified in Article 4 of Sub-Decree 224 on Construction Permits.

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Forestry
<p><i>Decree No. 567/G dated 16 September 2021 of the Government on “Forestry Protection Fund”.</i></p> <p>The Forestry Protection Fund (“FPF”) is a government fund created to raise and mobilize funds from a variety sources to ensure that forestry budgeting is appropriate, sustainable, and efficient.</p> <p>The FPF’s main sources of funding are:</p> <ul style="list-style-type: none"> <li>(i) State budget according to the annual budget allocation</li> <li>(ii) Forest restoration fee for compensation for planting trees and non-timber forest products</li> <li>(iii) 20% of revenue from the sale of timber and non-timber forest products harvested from forest land conversion</li> <li>(iv) 30% of revenue from the sale of timber harvested from production forests</li> <li>(v) 20% from the sale of confiscated timber and non-timber forest products belongs to the state</li> <li>(vi) 10% of revenue from the conversion of forest land to other targets</li> <li>(vii) 90% of revenue from the forest carbon trading</li> <li>(viii) 20% of revenue from fines and compensation for damage to timber, forest land and forest resources</li> <li>(ix) Assistance from domestic and international organizations and financial institutions</li> <li>(x) Contribution of individuals, legal entities or organizations, both domestic and foreign</li> <li>(xi) Other revenue in accordance with the law #</li> </ul> <p>This decision entered into force on 3 March 2022 after it was published in the Lao Official Gazette on 16 February 2022, and replaces Decree on Forestry and Forest Resource Development Fund No. 38/PM dated 21 February 2005.</p>
Industrial
<p><i>Decision No. 0141/MOIC.IHD dated 3 February 2022 of the Ministry of Industry and Commerce on “Green Industrial Certification”</i></p> <p>The decision specifies the conditions to qualify for a green industrial certificate, the application procedures for the certificate and its renewal, and the conditions for revocation of the certificate.</p> <p>The components to be reviewed for a green industrial certificate are:</p>



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- Energy savings
- Water conservation
- Use of renewable energy
- Waste reduction
- Raw material savings
- Air pollution reduction
- Water pollution reduction
- Noise pollution reduction
- Sustainable development
- Produces eco-friendly products
- Innovation and biodiversity conservation promotion
- Product cycle evaluation
- Factory restoration

Factory business operators who intend to apply for a green industrial certificate must submit an application to the Department of Industry and Handicrafts of the Ministry of Industry and Commerce.

This decision entered into force on 24 February 2022 after it was published in the Lao Official Gazette on 9 February 2022.

Taxation

*Instruction No. 0394/MOF dated 4 February 2022 of the Ministry of Finance on “Implementation of the Excise Tax Law No. 68/NA dated 19 June 2019”*

This instruction further clarifies some of the provisions under the Excise Tax Law No. 68/NA dated 19 June 2019 and the Law on Amendment to Some Articles of the Tax Law No. 01/NA dated 7 August 2021. It also implements new excise tax rates on fuel, vehicles, vehicle accessories, alcohol, tobacco, and certain entertainment categories in the Lao PDR.

This instruction entered into force on 4 February 2022.

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Foreign Investments

*Circular No. 02/2022/TT-BKHDT of the Ministry of Planning and Investment dated 14 February 2022 providing “**Guidance on the Supervision and Evaluation of Foreign Investments in Vietnam**”*

According to this circular, the supervision of foreign investments in Vietnam involves the following activities:

- Investment registration agencies are in charge of the activities stipulated in Decree No. 29/2021/ND-CP (the “**Decree**”), which prescribes the procedures for the appraisal of projects of national significance, and the supervision and assessment of investments, clause 1 of Article 71, including:
  - Assessment of investors’ compliance with the stipulated reporting regimes.
  - Review of projects’ implementation.
  - Review of projects’ operation or commercial use.
  - Evaluation of projects’ compliance with requirements for environmental protection, land use, and exploitation of available mineral resources.
  - Imposition of sanctions and review of compliance with sanctions by investors and entities.
  - Reporting on and recommending actions to address problems or issues falling outside of their competence.
  - State authorities are in charge of the activities stipulated in clause 1 of Article 72 of the Decree, including:
    - Assessment of investment registration agencies’ compliance with the stipulated reporting regimes.
    - Review of compliance with sanctions by investment registration agencies.
    - Other activities prescribed in clause 1 of Article 71 of Decree No. 29/2021/ND-CP.
  - This circular will enter into force as of 1 April 2022, replacing Circular No. 09/2016/TT- BKHDT dated 30 June 2016.

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e-Commerce

*Circular No. 01/2022/TT-BCT of the Ministry of Industry and Trade dated 18 January 2022 on “Amending Circular No. 47/2014/TT-BCT on the Management of e-Commerce Websites and Circular No. 59/2015/TT-BCT on the Management of e-Commerce by Mobile Phone Applications”*

According to this circular, an electronic contract authentication service policy must be publicized on the home pages of the websites and include the following content:

- The rights and obligations of traders and service providers
- The rights and obligations of service users
- A description of the media and electronic contract authentication process
- A statement on the limitation of the liability of traders and providers of electronic contract authentication services
- Regulations on information security and management of the provision of electronic contract authentication services
- Mechanisms for handling complaints and disputes among parties relevant to the provision of electronic contract authentication services
- Actions that will be taken in the event of a violation of the regulations

Circular No. 01/2022/TT-BCT will enter into force from 8 March 2022.

Auctions

*Circular No. 02/2022/TT-BTP of the Ministry of Justice dated 8 February 2022 on “Guidelines on the Selection of Property Auction Organizations”*

This circular sets out six criteria to review when selecting a property auction organization:

1. There are physical facilities and equipment that are necessary for auctions and suitable for auctioned property.
2. There is a feasible and effective auction plan.
3. The organization has the appropriate capability, experience, and reputation.
4. The auction service remuneration and property auction expenses are appropriate.
5. The organization is on the list of property auction organizations announced by the Ministry of Justice.
6. Other criteria that are suitable for the auctioned property and decided by the owner of the auctioned property.

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After the decision of the competent person on the auction of property is issued, the auctioned property owner must publicly announce on his/her website and the National Digital Information Portal for property auctioning its plan to select a property auction organization with the full criteria prescribed in Article 3 and Appendix I of this circular at least three working days before the date of assessment and selection (unless otherwise provided for by law).

Circular No. 02/2022/TT-BTP enters into force on 25 March 2022.

Tax and Accounting

*Decree No. 15/2022/NĐ-CP of the Government dated 18 January 2022 on “Tax Exemption and Reduction Policies according to Resolution No. 43/2022/QH15 on Fiscal and Monetary Policies in support of the Socioeconomic Recovery and Development Programs”*

The value added tax (“VAT”) rate on goods and services that are currently subject to 10% VAT is reduced to 8%, except for the following goods and services:

- Telecommunications; finance, banking, securities, insurance; real estate business; metals and precast metal products; and mining products (except coal mining), coke, refined petroleum, and chemical products. Details are specified in Appendix I of this decree.
- Goods and service are subject to excise tax. Details are specified in Appendix II of this decree.
- Information technology per the information technology law. Details are specified in Appendix III.
- The reduced VAT rate for the goods and services specified in Clause 1, Article 1 of Decree No. 15/2022/NĐ-CP is to be applied consistently at all stages—import, manufacture, processing, and trading.
- Coal mined for sale (including coal mined and then sorted and classified under a closed process before it is purchased) is eligible for the reduced VAT rate.
- The coal products specified in Appendix I are not eligible for the reduced VAT rate at stages other than the stage of mining and sale.
- For the goods and services specified in Appendices I, II, and III that are not subject to VAT or are subject to 5% VAT under the VAT Law, the VAT Law applies, and there will be no further reductions of VAT.
- This VAT reduction policy will apply from 1 February 2022 to 31 December 2022.

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- Decree No. 15/2022/NĐ-CP entered into force on 1 February 2022.

*Circular No. 02/2022/TT-BTC of the Ministry of Finance dated 11 January 2022 on “Fees for Processing Applications for the Issuance of Environmental Licenses by the Central Authorities”*

**Fees for processing applications for the issuance and reissuance of environmental licenses:**

- For projects or facilities in Group I (except for projects or facilities providing hazardous waste treatment services; projects or facilities importing scrap to use as raw materials for manufacture): VND50 million per license.
- For projects or facilities in Group II or projects or facilities in the area of two or more provincial administrative divisions or in territorial waters that are not under the jurisdiction of any specific provincial People’s Committee: VND45 million per license.

**Fees for processing applications for the issuance and reissuance of environmental licenses for projects or facilities handling harmful waste:**

- Up to 4 hazardous waste treatment devices: VND60 million per license per project; VND40 million per license per facility.
- From 5 to 10 hazardous waste treatment devices: VND65 million per license per project; VND50 million per license per facility.
- 11 or more hazardous waste treatment devices: VND70 million per license per project; VND60 million per license per facility.
- Previously, the fee for processing applications for the issuance of harmful waste handling licenses ranged from VND17 million to VND68.8 million; the fee for processing applications for the reissuance of these licenses was from VND8.3 million to VND41.1 million.
- The abovementioned fees will apply to individual applications for the issuance, reissuance, or adjustment of environmental licenses. The fees do not include the travel costs of the Inspectorates to the facilities and costs for taking and analyzing waste samples required under the regulations.
- Circular No. 02/2022/TT-BTC entered into force on 11 January 2022.



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*Circular No. 26/2021/TT-NHNN of the State Bank of Vietnam dated 31 December 2021 on “Guidelines for Foreign Currency Transactions between the State Bank and Credit Institutions Authorized to Make Foreign Currency Transactions”*

The types of foreign currency transactions between the State Bank and credit institutions authorized to make foreign currency transactions include:

- Foreign exchange (“FX”) spot transactions
- FX forward transactions
- Currency swaps
- Call options or put options (FX options)
- Other types of transaction as determined by the State Bank from time to time.

An FX option, a new type of transaction, is one in which the buyer pays the seller an amount for the option, but not the obligation, to buy or sell a currency during a certain period of time at an exchange rate determined at the time of the transaction.

If the buyer opts to exercise the call option, the seller has the obligation to sell the currency accordingly. In FX option transactions, the put option for one currency is also the call option for another currency.

Circular No. 26/2021/TT-NHNN took effect on 15 February 2022 and supersedes Circular No. 02/2012/TT-NHNN dated 27 February 2012, Circular No. 27/2013/TT-NHNN dated 5 December 2013 and Circular No. 45/2014/TT-NHNN dated 29 December 2014.

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*Circular No. 09/2022/TT-BTC of the Ministry of Finance dated 14 February 2022 “Amending the Regulations attached to Circular No. 153/2014/TT-BTC dated 20 October 2014 on the Assessment, Review, and Approval of Non-Government-Guaranteed Foreign Loans of Enterprises in which the State owns more than 50% of the Charter Capital”*

This circular specifies the following changes in conditions for the assessment, review, and approval of foreign loans:

- Projects funded by foreign loans must serve the production and business activities of an enterprise’s main business line; be owned or developed by the enterprise; and be included in the enterprise’s 5-year investment and development plans, and production and business plans.

(Under the regulations currently in effect, the only requirement is that these projects be part of the investment plans approved by the competent authorities).

- Owners’ representative agencies approve the policies to take out foreign loans. (Under the regulations currently in effect, the owners approve the policies to take out foreign loans.)
- Lenders agree in writing to offer foreign loans. (Under the regulations currently in effect, there is an additional step, with feasible foreign loan repayment plans evaluated and approved by the owners.)

Circular No. 09/2022/TT-BTC is set to commence on 1 April 2022.





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*Circular No. 6/2022/TT-BTC of the Ministry of Finance dated 8 February 2022 on “Guidelines on Compliance Supervision by the State Securities Commission regarding the Securities Operations of VNX and its Subsidiaries and the Vietnam Securities Depository and Clearing Corporation”*

The State Securities Commission will supervise compliance with the securities law and securities market regulations of the following VNX operations:

- The development and issuance of regulations on the listing of securities, securities trading, and information disclosure by VNX members, and other regulations related to the organization and operation of the securities market.
- The organization of the securities market in accordance with securities law.
- The granting and cancellation of VNX membership; the management, supervision, and inspection of members, and enforcement actions for violations by members of the securities law; mediation actions on disputes regarding securities trading operations.
- The organization and carrying out compliance monitoring of securities operations.
- The storage and protection of confidentiality, of files, documents, and original data related to securities operations.
- Other operations of VNX and its relevant subsidiaries.

Circular No. 6/2022/TT-BTC enters into force on 24 March 2022.

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