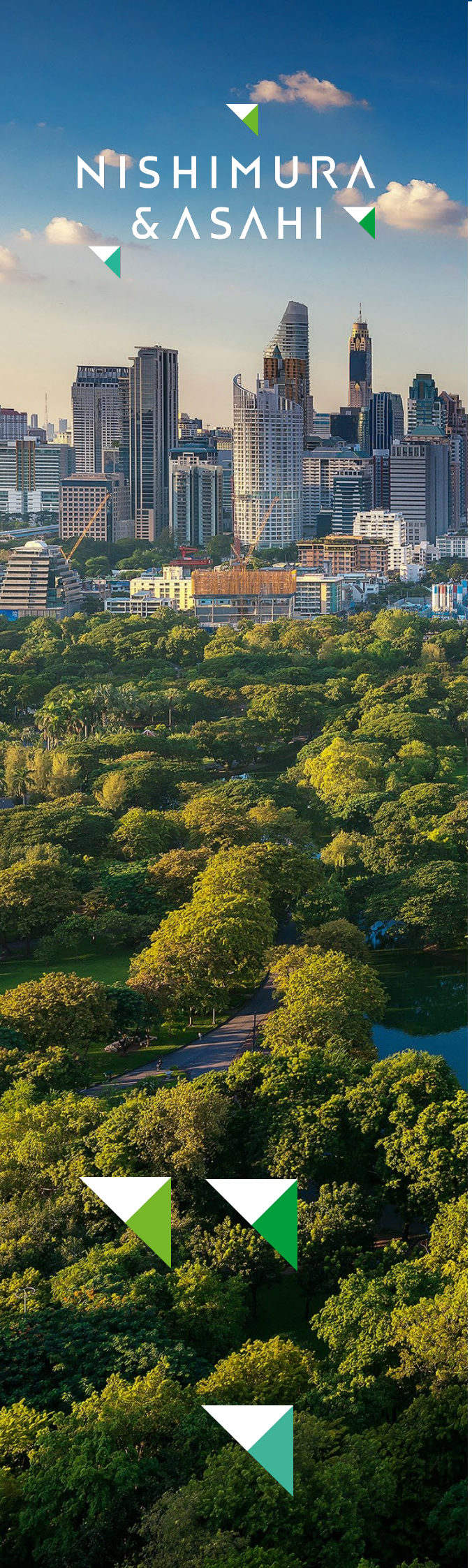


# Asia Legal Update

Fourth Quarter 2024
(Oct. - Dec.)

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## Japan Authors: Hiroki Kaga and Aya Okada

# Tokyo Stock Exchange to Review Code of Corporate Conduct for MBOs and Conversions to Wholly-Owned Subsidiaries by Controlling Shareholders This Spring

On 10 December 2024, the 19th Council of Experts Concerning the Follow-up of Market Restructuring ("**Council**") was held at the Tokyo Stock Exchange ("**TSE**"), where discussions were held on future measures and future follow-ups for the Growth Market. As one point for future follow-ups, TSE indicated that it will make a proposal on revisions to the Code of Corporate Conduct regarding management buyouts ("**MBOs**") and conversions to wholly-owned subsidiaries by controlling shareholders (i.e. wholly owned subsidiary transactions ("**Subsidiary Conversions**")) around in February 2025.[1]

### (i) Provisions in the Current Code of Corporate Conduct on MBOs and Subsidiary Conversions

The TSE established the Code of Corporate Conduct in the Securities Listing Regulations from the perspective of protecting shareholders and investors and promoting fair and sound market operations, and requests that listed companies take appropriate measures in accordance therewith. While MBOs and Subsidiary Conversions play an important role in maintaining a vibrant capital market by allowing companies to exit the market when that have completed their roles as listed companies, enabling drastic and flexible management without being affected by the pressure of capital market and providing shareholders with opportunities to gain a premium for their shares, there still remains the issue of structural conflicts of interest and information asymmetry. In order to address the concerns, TSE has included the following provisions in the Securities Listing Regulations and the Enforcement Rules for Securities Listing Regulations, from the perspective of (a) establishing an environment in which general shareholders can make appropriate judgments based on sufficient, necessary information about the appropriateness of transaction terms and other factors, and (b) promoting the establishment of fair transaction terms by ensuring the implementation of fair procedures.[2]

| | MBOs | Subsidiary Conversions |
|---|---|---|
| **Information disclosure** | ● **Requirement for necessary and sufficient timely disclosure** | |
| **Obtaining a valuation report** | ● **Requirement for obtaining, and disclosure of, a summary of a valuation report that includes the opinion of a third party with expertise or experience in the valuation of corporate value or stock on the price of the offer, etc.** | |
| **Obtaining an opinion that the transaction will not undermine the interests of minority shareholders** | ● **No provisions** | ● **Requirement to obtain an opinion* from an entity that has no interest in the controlling shareholder, stating that the transaction will not undermine the interests of minority shareholders (summary to be disclosed)** |

### (ii) Proposed Revisions

At previous Councils, while investors gave positive feedback admitting that fair procedures governing MBOs and Subsidiary Conversions have progressed based on the "Fair M&A Guidelines - Enhancing Corporate Value and Securing Shareholders' Interests" ("**Guidelines**") published by the Ministry of Economy, Trade and Industry in 2019 and recent court cases, they also expressed concerns that fair procedures and fair prices are still not being achieved in certain situations. Further, the investors stated that the Guidelines were not as strict as those in the U.S., and that the TSE should aim for levels comparable with the U.S., when viewed by global investors. At the 18th Council, on 31 October 2024, the aforementioned provisions were discussed, with a view to revising them as follows.[3]

| **Further demonstration of special committee functions (review of obtaining an opinion that the transaction will not undermine the interests of minority shareholders)** | |
|---|---|
| **Activities subject to receiving opinions** | ● **MBOs to be included in the scope** |
| **Source of opinions** | ● **The establishment and consideration of a special committee, and obtaining opinions from that committee, to become mandatory** |
| **Content of opinions** | ● **From the perspective of whether the legitimate interests of minority shareholders are being secured (whether the increase in corporate value is being distributed fairly, in proportion to shares held), it is mandatory to obtain "opinions on whether transactions are fair for minority shareholders and general shareholders"**<br>● **The listing rules also state that the points to be considered when forming an opinion should be stated clearly, and that the content considered and basis for the judgement should be explained thoroughly in the opinion** |
| **Enhancing the disclosure of assumptions for calculation of share value** | |
| ● **The details of concrete expansions of disclosures will be considered, taking into account the opinions of investors** | |

### (iii) Outlook

At present, the TSE and market participants are engaged in active coordination, based on the direction outlined in section 2 above; it is expected that the proposed revisions to the Code of Corporate Conduct will be presented around February 2025, and that the new provisions will come into force around spring of the same year, after discussions by the Council and public comment periods.

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1 The 19th Council Minutes (https://www.jpx.co.jp/english/equities/follow-up/b5b4pj000004yqcc-att/dh3otn000000npum.pdf) p.14, Document 2 "Future follow-up" (https://www.jpx.co.jp/english/equities/follow-up/b5b4pj000004yqcc-att/dh3otn000000mqtb.pdf)

2 The 16th Council Document 2 "Revising the Code of Corporate Conduct (Supplementary Materials to Previous Council)" (https://www.jpx.co.jp/english/equities/follow-up/b5b4pj000004yqcc-att/dh3otn0000006vlp.pdf) p.9

3 The 18th Council Document 8 "Revising the Code of Corporate Conduct" (https://www.jpx.co.jp/english/equities/follow-up/b5b4pj000004yqcc-att/dh3otn000000jhvg.pdf) pp.3-4, Minutes (https://www.jpx.co.jp/english/equities/follow-up/b5b4pj000004yqcc-att/dh3otn000000kthi.pdf) pp.12-17

## India Authors: Taeko Suzuki, Udhav Gulati

## 1. RBI Operational Framework for Reclassification of FPI Investment to FDI

On 11 November 2024, the Reserve Bank of India ("**RBI**") issued a circular ("**Circular**") prescribing an operational framework for the reclassification of investment made by a foreign portfolio investor ("**FPI"**) along with its investor group ("**FPI Investment**") to foreign direct investment ("**FDI**"). Under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, any FPI Investment must be less than ten percent of the total paid-up equity capital of the Indian investee company on a fully diluted basis ("**Threshold**"). Furthermore, if an FPI exceeds the Threshold, it has the option of either divesting its holdings or reclassifying them as FDI. The Circular clarifies the process of reclassifying FPI Investment into FDI and sets forth the following key requirements:

- **FDI prohibited sectors**: Reclassification is not allowed in sectors where FDI is prohibited.
- **Government approvals and concurrence**: The FPI must obtain the necessary government approvals and concurrence from the Indian investee company to ensure that the acquisition exceeding the Threshold complies with applicable FDI laws.
- **Notification to Custodian**: The FPI must notify its custodian of the intention to reclassify its holdings and provide copies of the necessary approvals and concurrence.
- **Reporting**: The investment held by the FPI must be reported to the RBI in the prescribed manner.
- **Transfer to FDI demat account**: After reporting to the RBI, the FPI must approach its custodian to request the transfer of its FPI Investment to its FDI demat account.

Once reclassified as FDI, the entire investment of the FPI in the Indian investee company will continue to be treated as FDI even if the investment falls below the Threshold at a later stage. The FPI, along with its investor group, is treated as a single person for the purposes of the reclassification.

## 2. CCPA Guidelines on Greenwashing and Misleading Environmental Claims

On 15 October 2024, the Central Consumer Protection Authority ("**CCPA**") issued the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 ("**Guidelines**") under Section 18 of the Consumer Protection Act, 2019 ("**CPA**"). The Guidelines seek to ensure transparency and accuracy in advertisements related to environmental sustainability and apply to any person involved in advertising goods or services that make environmental claims, including advertisers, product sellers, advertising agencies, service providers, and endorsers. The Guidelines specifically prohibit greenwashing and misleading environmental claims while advertising goods or services. As per the Guidelines, greenwashing is defined to include any deceptive or misleading practice by making vague, false, exaggerated, or unsubstantiated environmental claims. Any advertisements using generic terms such as "natural", "eco-friendly", or "green" for making environmental claims must contain adequate qualifiers and disclosures, as set forth in the Guidelines. Any false or misleading advertisements prejudicial to the interests of consumers are punishable under the CPA, with penalties of imprisonment of up to two years and fines of up to one million Indian rupees.

## 3. Higher Stamp Duty Rates in Maharashtra

On 14 October 2024, the Government of Maharashtra issued the Maharashtra Stamp (Amendment) Ordinance, 2024[4] ("**Ordinance**"), which amended various articles of Schedule I of the Maharashtra Stamp Act, 1958. By virtue of the Ordinance, higher stamp duty rates have been prescribed for various documents, including articles of association, arbitral awards, partnership deeds, and works contracts.

[4] http://mls.org.in/ordinance/2024/Ordinance%20%2012%20English.pdf

## United Arab Emirates Authors: Masao Morishita and Ayush Sharma

### 1. Amendments to Reporting Requirements under Economic Substance Regulations

The UAE Federal Government issued Cabinet Decision 98 of 2024 ("**2024 Cabinet Decision**") , which substantially abolishes the Economic Substance Regulations (Cabinet of Ministers Resolution 31 of 2019). The present economic substance regulations are outlined in Cabinet Decision 57 of 2020 ("**2020 Cabinet Decision**").

The 2024 Cabinet Decision introduced a clause into the 2020 Cabinet Decision stipulating that the economic substance requirements apply only to financial years starting from 1 January 2019 and ending on or prior to 31 December 2022. The 2024 Cabinet Decision further provides that (a) any relevant administrative fines imposed on a "licensee" or an "exempt licensee" in accordance with the 2020 Cabinet Decision for a financial year ending after 31 December 2022 will be extinguished and (b) in the event that any administrative fines have already been collected in respect of any financial year ending after 31 December 2022, these fines will be returned and any ongoing enforcement proceedings withdrawn.

### 2. Introduction of New Climate Change Law

The UAE Federal Government issued Federal Decree Law No. 11 of 2024 ("**Climate Change Law**") to limit the impact of climate change. The Climate Change Law applies to all public and private enterprises, including those established in free zones, the operations of which result in the release of greenhouse gases ("**Sources**").

The Climate Change Law stipulates that all Sources are required to reduce their emissions through one or more of the following means: (i) improving energy efficiency; (ii) using clean energy; (iii) enhancing and protecting natural carbon sinks; (iv) carbon capture, use, and storage; (v) using alternatives to saturated fluorocarbons; (vi) carbon offsetting; (vii) implementing integrated waste management; and (viii) any other technologies or means determined by the Ministry of Climate Change and Environment ("**Ministry**"), local authorities in each Emirate ("**Competent Authorities**"), and federal and local government entities concerned with the application of the Climate Change Law.

The Ministry may, after coordinating with the entities concerned and the competent authorities, issue resolutions regarding the controls, standards, and requirements for application of any of the means above.

Further, the Sources are required to comply with the following:

(i) measure emissions emitted from their activities on a regular basis, prepare an emissions inventory and submit periodic reports per the standards specified by the Ministry or Competent Authorities, and take measures to reduce those emissions;
(ii) submit to the Ministry and Competent Authorities data on activities related to emissions, current and future emissions reduction measures, and their expected results, per the forms approved by the Ministry; and
(iii) maintain a record of measured emission for a period of five (5) years from the date of each analysis and enable employees of the Ministry and Competent Authorities to access those records.

Failure to comply with the above may result in a fine of up to AED 2,000,000 but not less than AED 50,000. Repeat offences within a period of two (2) years may result in double the amount of fine.

The Climate Change Law will come into effect on 30 May 2025, and Sources will be required to adjust their operations to comply with the Climate Change Law within one (1) year from the date of its enforcement.

## Bangladesh Authors:[5] Taeko Suzuki and Varsha Bhattacharya

### 1. Government Establishes Five Additional Reform Commissions

On 18 November 2024, the interim government of Bangladesh established five new reform commissions to promote development, namely: (a) the Healthcare Reforms Commission,[6] (b) the Labour Reforms Commission,[7] (c) the Media Reforms Commission,[8] (d) the Local Government Reforms Commission,[9] and (e) the Women's Affairs Reforms Commission.[10] These commissions are required to submit their reports within 90 days of their formation. The aforementioned five commissions are in addition to the six reform commissions established by the interim government in October 2024,[11] reports of which are expected to be submitted soon.[12]

### 2. Consolidated Guidelines for Joint Ventures in Bangladesh with Foreign Partners

On 20 November 2024, the Bangladesh Bank issued a circular titled "Guidelines for Operations of Business in Bangladesh by Joint Ventures/Consortiums/Associations (JVCA) having foreign partner(s)" to consolidate regulations applicable to joint ventures, consortiums, and associations with foreign partners ("**JVCA Entity**").[13]

Key provisions of the circular are enlisted below:

(a) JVCA Entity needs to obtain permission from the Bangladesh Investment Development Authority and other competent authorities, as applicable, and limit their activities to those mentioned in the permission letter from such authorities;
(b) JVCA Entity needs to intimate the Foreign Exchange Investment Department ("**FEID**") within 30 days of such permission;
(c) Partners of JVCA Entity need to execute a valid contract;
(d) JVCA Entity needs to maintain bank accounts in Bangladesh to which all payments against work orders are to be credited;
(e) Where the project is funded by international entities, a foreign currency account may be opened where only funds from such international funding entity can be credited and from which foreign currency expenses of the JVCA Entity may be met;
(f) JVCA Entity needs to maintain separate financial statements as per the Bangladesh Financial Reporting Standards, which must reflect all income generated from local sources, whether credited in bank accounts in Bangladesh or otherwise;
(g) Subject to approval from the FEID, an existing branch office of a JVCA partner may provide loans to the JVCA out of available unencumbered surplus funds; and
(h) Outward remittance of profits of JVCA Entity to foreign partners is subject to approval from the Bangladesh Bank, including if such remittance is to be made to a branch office of such partner in Bangladesh.

### 3. Banks Permitted to Issue Performance Bonds and Guarantees to Overseas Buyers

On 30 October 2024, the Bangladesh Bank issued a circular permitting Authorized Dealer banks in Bangladesh to issue performance bonds and guarantees in favour of overseas buyers or contractors against letters of credit, sale-purchase contracts, work orders, advance payments, etc., on behalf of Bangladesh resident exporters or sub-contractors, without requiring prior permission from the Bangladesh Bank, which was previously required.[14] The banks are required to conduct due diligence to ensure the legitimacy of underlying arrangements, and compliance with applicable laws.

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[5] We hereby thank Mr. Mohammad Hasan Habib from A.S & Associates, a Bangladesh law firm, for his support in preparation of this article.
[6] https://www.dpp.gov.bd/upload_file/gazettes/56239_20894.pdf
[7] https://www.dpp.gov.bd/upload_file/gazettes/56241_38625.pdf
[8] https://www.dpp.gov.bd/upload_file/gazettes/56238_66337.pdf
[9] https://www.dpp.gov.bd/upload_file/gazettes/56242_72826.pdf
[10] https://www.dpp.gov.bd/upload_file/gazettes/56240_33029.pdf
[11] In October 2024, the interim government had established six reform commissions: (a) the Public Administration Reform Commission, (b) the Judiciary Reform Commission, (c) the Police Reform Commission, (d) the Anti-Corruption Reform Commission, (e) the Electoral System Reform Commission, and (f) the Constitutional Reform Commission.
[12] https://www.bssnews.net/news/top-news/238441, https://en.prothomalo.com/bangladesh/azz5pglbtm
[13] https://www.bb.org.bd/mediaroom/circulars/feid/nov202024feid02e.pdf
[14] https://www.bb.org.bd/mediaroom/circulars/fepd/oct302024fepd26e.pdf

## Sri Lanka Author[15]: Akihiro Kawashima

### 1. Transforming Public Procurement in Sri Lanka

On November 25, 2024, the National Procurement Commission published the Procurement Guidelines on Goods, Works, and Non-Consulting Services ("**Guidelines**"). The Guidelines came into effect on January 1, 2025, and replaced the Procurement Guidelines 2006 on Goods and Works and the Manual issued by the National Procurement Agency ("**NPA**"), as well as the related supplements and circulars issued by the NPA and the General Treasury. The Guidelines cover government procurement of goods, works, and non-consulting services, but exclude areas such as the selection of consultants, public-private partnerships, consumable pharmaceuticals, and contract management. The scope of goods, works, and non-consulting services is defined broadly, to encompass such items as commodities, infrastructure projects, and essential services, including security and cleaning.

When it comes to foreign funding, where multi-lateral or bilateral agencies that finance projects or programs in Sri Lanka ("**Foreign Funding Agencies**") mandates adherence to its own procurement guidelines, those requirements take precedence over the Guidelines. The Guidelines for procurement through international competitive bidding require that the bidding and contract conditions apply equally to both domestic and foreign bidders, except when domestic preference is invoked. If a contract involves foreign currency payments, both types of bidders can submit bids and receive payments in foreign currency, as long as they comply with the relevant contract terms. To be eligible for foreign currency payments, bidders must provide justifications, which can include information about importing materials or paying expatriate salaries.

### 2. Key Changes to Outward Remittances under Sri Lanka's Foreign Exchange Act

On December 19, 2024, the Sri Lankan government issued an extraordinary gazette notification ("**Notification**") introducing amendments regarding outward remittances pursuant to Section 22 of the Foreign Exchange Act (FEA) No. 12 of 2017. These changes aim to regulate outward remittances, foreign investments, and currency transactions, emphasizing the conservation of foreign exchange reserves.

The Notification provides that migration allowances for emigrants are capped at USD $100,000, while capital transactions through Business Foreign Currency Accounts and Personal Foreign Currency Accounts are restricted to USD $200,000 and USD $20,000, respectively. In addition, payments through Outward Investment Accounts are suspended for general overseas investments. Exceptions include investments in ordinary shares of overseas companies, limited to USD $500,000 per calendar year for companies listed on the Colombo Stock Exchange and USD $150,000 or 20% of net assets (whichever is lower) per calendar year for non-listed companies. Establishing overseas offices is permitted, in amounts up to USD $100,000 per calendar year.

The Notification became effective on December 20, 2024, and is valid for six months, reflecting a measured approach to balancing international economic engagement with the preservation of Sri Lanka's foreign reserves.

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

## Pakistan Authors[16]: Taeko Suzuki, Tomoko Nakashima

### 1. The Banking Companies (Amendment) Act, 2024

The Banking Companies (Amendment) Act, 2024 ("**Amendment**") was enacted and came into force on October 31, 2024. This Amendment amends the Banking Companies Ordinance,1962 (LVII of 1962).
Some notable aspects of the Amendment include:

(i) Introduction of an Islamic banking framework, in accordance with banking systems under Islamic Shariah law; and
(ii) Appointment of the State Bank of Pakistan as the dispute resolution authority for banking companies and introduction of an enhanced liquidation, recovery, and resolution process for banking companies.

### 2. Approval of Carbon Market Policy

The Carbon Market Policy ("**Policy**") was developed by the Ministry of Climate Change & Environmental Coordination, and was approved by the federal cabinet of Pakistan around the end of December 2024. The Policy seeks to combat climate change by establishing a framework for reducing greenhouse gas emissions, attract green investments by incentivizing businesses to invest in low-carbon projects, and align with the country's national contributions under the Paris Agreement.
The Policy has three key pillars:

(i) Environmental integrity, to ensure real and verifiable emissions reductions;
(ii) Economic development, to promote sustainable economic growth; and
(iii) Equitable benefit sharing, to ensure fair distribution of benefits from carbon markets.

The Policy also aims to attract investment for the sustainable development sector.

[16] We hereby thank Mr.Syed Ali Bin Maaz from Kabraji & Talibuddin, a Pakistan law firm, for his support in preparation of this article.

## Turkey Author: Taro Hirosawa

## 1. Amendment to Regulations Regarding Medical Devices

In Turkey, the following amendments to the regulations regarding medical devices were made between September and October 2024

**Technical Service and Warranty Requirements:**

- Medical device sales centres must adhere to the “Regulation on the Technical Service Provisions of Medical Devices Used in the Scope of Health Service Provision” for devices and their accessories they sell or import.
- They must upload a commitment to provide technical service for certain devices and accessories throughout their lifecycle in the Product Tracking System. Non-compliance may result in the cancellation of their registry.
- Spare parts should be delivered within 20 business days for domestic and 30 business days for international requests from the request date by the medical device sales centres.
- Sales centres must provide necessary passwords for technical service within 24 hours upon request of the healthcare service provider using the device.
- Warranty certificates should indicate the service life determined by the manufacturer and start from the date of the invoice issued after the device is accepted by the healthcare provider. If the invoice is issued prior to the acceptance of the device, regardless of the invoice date, the warranty period will begin from the acceptance date of the device.

## 2. Turkey's Competition Law: Key Updates on Labour, Technology, and EV

Turkey focuses on in its competition law, including the Turkish Competition Authority’s (“**TCA**”) draft guidelines on competition issues in labour markets, the technology undertakings exception, and landmark decisions in the Electronic Vehicles (“**EV**”) sector, such as Trugo & Shell and Togg & Bosch. The following provide an overview of recent critical changes shaping Turkey's antitrust framework.

### (i) TCA's Guidelines on Competition Infringements in Labour Markets

The TCA's Guidelines on Competition Infringements in Labour Markets, the draft of which was announced on 16 September 2024, and which was finalized and published on 3 December 2024 provide insights into wage-fixing and no-poach agreements as antitrust violations while expanding the focus to areas like competitively sensitive information exchanges and vertical labour market restrictions. Accordingly, by way of an example, intermediary human resources companies and exchanges of information among such companies may be subject to increased scrutiny from the Turkish Competition Board, and such scrutiny is expected to focus particularly on assessment of potential anti-competitive impacts of such data-handling practices. The Guidelines also outline the criteria for ancillary restraints and propose dominance tests in labour markets for mergers and dominance abuse cases. However, gaps remain in areas such as ancillary restraint examples and employee transfer issues, leaving practitioners to rely on future case law for clarity. The guidelines reflect Turkey’s growing focus on labour market antitrust issues.

### (ii) Technology Undertakings Exception: Simplifying Merger Notification Thresholds

TCA’s technology undertaking exception, introduced in 2022, simplifies merger notification thresholds for specified sectors such as biotechnology, digital platforms, and health technologies. Early Turkish Competition Board precedents applied the exception broadly, covering entities with minimal R&D or Turkish nexus. Recent decisions, however, suggest limits: companies selling basic medical or satellite equipment without significant R&D innovation may not qualify. As no reasoned decisions are published for non-notifiable cases, companies should carefully assess applicability to avoid gun-jumping risks while navigating this evolving regulatory framework.

### (iii) TCA's Individual Exemptions for Energy and Automotive Sector Collaborations

TCA granted individual exemptions under Article 5 of Law No. 4054 for collaborations in the energy and automotive sectors. Trugo and Shell's EV charging network collaboration was cleared, enhancing efficiency and consumer choice while maintaining competition. Similarly, Togg and Bosch's hybrid after-sales service agreement complied with the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector. Both decisions highlight the TCA's focus on supporting innovation and establishing legal frameworks that balance market growth with competitive fairness. These rulings set precedents for future collaborations in these sectors.

## Indonesia Authors: Miriam Andreta and Hans Adiputra Kurniawan

## 1. Constitutional Court Decision on Manpower Act

In October 2024, the Indonesian Constitutional Court rendered Decision No. 168/PUU-XXI/2023 ("**Decision 168**"), which shifts the legislative landscape with regard to the Manpower Act. The key takeaways of Decision 168 for employers are summarised below.

(i) **Hiring Foreign Workers**: While hiring foreign workers remains permissible, Decision 168 emphasizes the need to prioritize local workers. The specifics of how this "prioritization" will be implemented remain to be seen.

(ii) **Definite-Term Employment Agreement (*PKWT*)**: Decision 168 affirms that all PKWTs, including project-based PKWTs, and extensions thereof, are limited to a maximum of five years. PKWTs must be written in the Indonesian language, using Latin script.

(iii) **Outsourcing**: Decision 168 directs the Minister of Manpower to specify the types and fields of work eligible for outsourcing. This may limit the current, broad scope of outsourceable work, potentially restricting it to supporting/non-core work only.

(iv) **Performing Obligations During Disputes**: Previously, the cut-off date for parties to continue performing their obligations during an industrial relations dispute was not clear. Decision 168 now clarifies this, specifying that obligations persist until a final and binding decision is rendered by the institution for the settlement of industrial relations disputes. This may entail the employer's obligation to continue paying a terminated employee's salary throughout the dispute process.

## 2. Upcoming Mandatory Legal Audit for Businesses

The Government of Indonesia is in the process of enacting a new regulation aimed at enhancing legal awareness and improving compliance among businesses (Draft Bill). Key highlights of the Draft Bill include provisions to increase transparency in corporate governance, stricter penalties for non-compliance, and mandatory legal audit. Businesses operating in Indonesia should monitor development of the Draft Bill closely, as it may bring significant changes to their compliance requirements and operational practices.

(i) **Mandatory Annual Legal Audit**

The Draft Bill contains a new requirement for businesses to undergo a mandatory annual legal audit by legal auditors certified by the Minister of Law (MOL). The Draft Bill does not indicate clearly when the legal audit should take place, but we anticipate that this will be clarified in forthcoming implementing ministerial regulations.

A legal audit must be performed at least once per year to assess businesses' compliance with laws and regulations, and good governance practices. The audit process involves identifying the objectives of the legal audit, planning the scope of the legal audit, collecting and analysing data, and providing compliance recommendations to businesses. Subsequently, businesses must submit a legal audit report, along with the details of corrective measures taken, to the MOL, the relevant sector ministries, and the regional authorities overseeing licensing and government affairs.

(ii) **Sanctions**

If a business fails to comply with the mandatory annual audit requirement, the MOL may impose sanctions, including without limitation the appointment of a legal auditor to perform an independent legal audit. The Draft Bill mandates that each relevant Minister establish detailed procedures and applicable sanctions.

## Malaysia Authors: Wan May Leong and Wan Yi Lim

### 1. Rise in Minimum Wages

On 25 October 2024, the Malaysian Prime Minister Datuk Seri Anwar Ibrahim announced during the tabling of Budget 2025 that the minimum monthly wages would be increased to RM1,700 from the existing rate of RM1,500. The Minimum Wages Order 2024 ("**MWO 2024**") was later gazetted on 4 December 2024, prescribing that the revised minimum wages rates in Malaysia with effect from 1 February 2025 ("**Minimum Wages Rate 2025**") shall be as follows:

<table>
<tr><td colspan="5">Minimum Wage Rates</td></tr>
<tr><td>Monthly</td><td colspan="3">Daily</td><td>Hourly</td></tr>
<tr><td rowspan="3">RM 1,700</td><td colspan="3">Number of working days in a week</td><td rowspan="3">RM 8.72</td></tr>
<tr><td>6</td><td>5</td><td>4</td></tr>
<tr><td>RM 65.38</td><td>RM 78.46</td><td>RM 98.08</td></tr>
</table>

The MWO 2024 will come into effect in 2 stages:

(i) from 1 February 2025 onwards, the Minimum Wages Rate 2025 will be applicable to (a) employer who employs 5 or more employees and (b) regardless of the number of employees employed, employer who carries out a professional activity classified under the Malaysia Standard Classification of Occupations (MASCO) as published officially by the Ministry of Human Resources;
(ii) from 1 August 2025 onwards, all employers (including employers employing less than 5 employees) shall remunerate their employees in accordance with the Minimum Wages Rate 2025.

Based on a FAQ published by the National Wages Consultative Council Secretariat, except for apprentices under apprenticeship contracts and domestic servants, the MWO 2024 will apply to all employees, including foreign employees in the private sector. Pursuant to Section 43 of the National Wages Consultative Council Act 2011, any employer who fails to pay the basic wages as specified in the minimum wages order to his employees commits an offence and shall, on conviction, be liable to a fine of not more than RM10,000 for each employee.

### 2. Guidelines on the Implementation of Flexible Working Arrangement

Following the amendments to the Employment Act 1955 in 2023, employees in Peninsula Malaysia are now allowed to apply for flexible working arrangement ("**FWA**") by making an application to employer in writing in the form and manner as may be determined by the Director General of Labour. In this respect, a Guidelines on the Implementation of Flexible Working Arrangement ("**FWA Guidelines**") published by the Department of Labour in Peninsular Malaysia was launched on 5 December 2024 to provide further guidance to employers, employees and trade union in relation to the FWA, as well as some sample application forms for FWA that may be adopted by the employees.

Pursuant to the FWA Guidelines, there are generally 4 types of FWA:

(i) flexible hours, where employees can choose to adjust his daily or weekly working hours or breaktime;
(ii) flexible days, where employees can choose to have longer working hours and correspondingly to have lesser working days in a week;
(iii) flexible place, where employees can choose to work at home or any location other than the office, or work at office for specific number of days as determined by the employer; and
(iv) a combination of any FWAs described in (i) to (iii) above.

The FWA may be implemented permanently with no specific end date, for a specific period, or alternately between the employees(e.g. when employee A is allowed to work from home on Monday, employee B is required to work in the office; whereas when employee B is allowed to work from home on Tuesday, employee A is required to work in the office, vice versa).
Pursuant to Section 60Q of the Employment Act 1955, an employer must respond to an application for FWA within 60 days. When accepting the application, an employer may specify mechanism(s) to monitor the works carried out by the employee, include provision to cancel the FWA if required, or to provide benefits to the employees such as internet allowances, utilities allowances, etc. However, an employer cannot include any condition which will deny the employees of his rights under Part VII of the Employment Act 1955 (e.g. rest days, holidays, etc.), breach the terms and conditions in the collective agreement, reduce the benefits as provided in the employment agreement, or assign excessive works to the employees as compared to the assignment prior to the implementation of FWA. If the employer decides to reject the application, the justification for the rejection must be provided to the employee in writing. The employer must also ensure that there is no discrimination in granting the approval for FWA, or else the employee can file a complaint with the Department of Labour.
Notwithstanding the above, the Department of Labour acknowledges in the Guidelines that not all types of job are suitable for FWA, and that FWA would only be suitable for jobs that do not require all-time physical attendance of the employee at the workplace.

## Philippines Authors: Michelle Marie F. Villarica, Steffi C. Sales

### 1. BSP Lifts Moratorium on Entry of New Electronic Money Issuers and Issuance of Digital Banking Licenses

On 15 December 2024, the Central Bank of the Philippines ("**BSP**") issued Memorandum No. M-2024-046 ("**New Memorandum**") lifting its moratorium on regular applications for new Electronic Money Issuers - Non-Bank Financial Institutions ("**EMI-NBFI**"), effective 16 December 2024. This ended the BSP's temporary prohibition on regular EMI-NBFI applications that began on 16 December 2021. The New Memorandum states that applications from applicants that meet the standard licensing criteria, including an evidence-based market study, and involve i) new business models, (ii) unserved, targeted niches, and (iii) new technologies, will be accepted for processing. While the New Memorandum does not provide any further explanations of the criteria or information on whether the BSP intends to implement any additional requirements to the standard licensing criteria, it is expected that the BSP will consider only research-supported financial solutions that use new or emerging technology, use existing technology in an innovative manner, or bridge a market gap in the delivery of financial products and services. With the lifting of the moratorium on regular applications, the BSP seeks to promote digital payments, enhance financial inclusion, and foster innovation that could serve a wider segment of the market.

The BSP also lifted its moratorium on the grant of new digital banking licenses, including conversion of an existing bank license to a digital bank license, starting 1 January 2025. On 26 December 2024 the BSP issued BSP Circular No. 1205 series of 2024 ("**BSP Circular No. 1205**"), which updates the application process for approval to establish a digital bank to include a number of new requirements, for example, mandatory submission of a more detailed feasibility study with projected monthly financial statements ("**FS**") for the first year and projected annual FS for the first five years of operations, and a detailed assessment of and technical report concerning the applicant's supporting IT system and infrastructure, which must be performed by a competent independent third-party IT expert. However, BSP Circular No. 1205 also states that only a maximum of 10 digital banks will be permitted to operate in the Philippines. Considering that the BSP already issued licenses to six digital banks, this means that only four new digital banking licenses are available.

### 2. NPC Issues Child Data Advisory and New Guidelines Governing AI Systems That Process Personal Data

On 17 December 2024, the National Privacy Commission ("**NPC**") issued Advisory No. 2024-03 ("**Child Advisory**") which applies to all persons who process the personal data of children (i.e., persons below the age of 18). It also covers products or services specifically intended for children or likely to be accessed by children. One of the key obligations in the Child Advisory requires persons who control the processing of personal data to implement appropriate measures to ensure the protection of children's personal data, including age assurance mechanisms and privacy controls. This includes adopting a risk-based approach to determine and implement appropriate, enhanced privacy controls when processing children's personal data, to ensure (i) children's accounts have privacy settings set to the highest level by default, and (ii) easy access to privacy settings, with a requirement that children be made fully aware of the available privacy settings and how to adjust them.

On 19 December 2024, the NPC issued Advisory No. 2024-04 ("**AI Advisory**"), which declares that the Philippine Data Privacy Act ("**DPA**"), its implementing rules and regulations ("**IRRs**"), and all issuances by the NPC apply to the development and deployment of artificial intelligence ("**AI**") systems, including their training and testing. The AI Advisory requires persons who process personal data using AI systems to inform data subjects of the factors and input considered by those AI systems, as well as the expected output and the impact of the AI systems on the data subjects. Persons who control the processing of personal data also must implement appropriate, effective governance mechanisms (e.g., creation of a dedicated AI ethics board, regular retraining and scrubbing of AI systems to detect errors to ensure ethical and responsible processing of personal data in the development and deployment of AI systems, including training and testing.

## Singapore Authors: Melissa Tan and Su Xian Chin

### 1. PDPC Statement on Use of NRIC Numbers

On 14 December 2024, the Personal Data Protection Commission ("**PDPC**") released a statement that specifically advises against (a) individuals' use of National Registration Identification Card ("**NRIC**") numbers as passwords, and (b) organisations' use of NRIC numbers to authenticate an individual's identity or set default passwords ("**PDPC Statement**"). This statement was issued in light of a statement issued by the Ministry of Digital Development and Information ("**MDDI**") on 13 December 2024 outlining the appropriate use, and misuse, of NRIC numbers, in reply to media inquiries concerning the disclosure of NRIC numbers on the Accounting and Corporate Regulatory Authority's (ACRA) BizFile system : https://www.pdpc.gov.sg/news-and-events/press-room/2024/12/pdpcs-reply-to-media-queries-on-the-use-of-nric-numbers

The existing Advisory Guidelines on the Personal Data Protection Act for NRIC and other National Identification Numbers, which clarify how the PDPA applies to organisations' collection, use and disclosure of NRIC (or copies thereof), and retention of physical NRICs by organisations, will be updated by the PDPC further to align with PDPC Statement, subject to the PDPC's public consultations : https://www.pdpc.gov.sg/guidelines-and-consultation/2020/02/advisory-guidelines-on-the-personal-data-protection-act-for-nric-and-other-national-identification-numbers.

In particular, according to the PDPC Statement:

(i) NRIC numbers should not be used as passwords, just as individual names are not used as passwords, and any individuals who have done so should change their passwords immediately. Most services that require password access also will allow passwords to be changed; otherwise, it is recommended that individuals contact service providers immediately to change the password.

(ii) A person's name and NRIC number (which is not a secret) identifies the person, and should not be used by an organisation for authentication purposes. PDPC consistently takes organisations to task for using NRIC numbers for authentication purposes. Authentication requires proof of identity, for example, through a password, security token, or biometric data. NRIC numbers also should also not be used as default passwords for services provided to an individual. Organisations that engage in these practices should phase them out as soon as possible.

(iii) When designing authentication practices, organisations should refer to pages 15-16 of the guidelines issued by PDPC on the Guide to Data Protection Practices for ICT Systems : https://www.pdpc.gov.sg/-/media/files/pdpc/pdf-files/other-guides/tech-omnibus/guide-to-data-protection-practices-for-ict-systems.pdf. For example, there should be strong requirements for administrative accounts, such as complex passwords or 2-Factor Authentication (2FA)/Multi-Factor Authentication (MFA), as unauthorised access is one of the most common types of data breaches.

(iv) Like any personal identifier, NRIC numbers remain subject to the data protection obligations in the Personal Data Protection Act 2012 of Singapore. Therefore, organisations collecting NRIC data must still obtain valid consent, comply with reasonable use, and ensure protection, and comply with other relevant obligations.

### 2. Amendment to Child Development Co-Savings Act 2001

A bill to amend the Child Development Co-Savings Act 2001 of Singapore ("**CDCA**") was passed on 13 November 2024, and contains a number of changes to the existing law, including: (a) increasing shared parental leave to six (6) weeks starting 1 April 2025, and 10 weeks starting 1 April 2026, and (b) enhancing the Government-Paid Paternity Leave to a mandatory (no longer voluntary) four (4) weeks on or after 1 April 2025, based on the child's birth date or estimated due date (whichever is later), or eligibility date for an adoption application. The CDCA applies to eligible working fathers who have served their employers for a continuous period of at least three (3) months, where the child is a Singaporean Citizen.

## Thailand Authors: Jirapong Sriwat, Apinya Sarntikasem

### 1. Amendment of the Rates for Contributions and Supplementary Contributions to the Employee Welfare Fund

On 22 November 2024, the Minister of Labor issued the Ministerial Regulation Prescribing the Rates of Contributions and Supplementary Contributions to the Employee Welfare Fund B.E. 2567 (2024) ("**Ministerial Regulation**"), which taking effect on 1 October 2025.

The Ministerial Regulation applies to employers and employees who are members of the employee welfare fund pursuant to Section 130 of the Labor Protection Act B.E. 2541 (1998). It requires that contributions and supplementary contributions be made to the employee welfare fund at the following rates, as set forth in this Ministerial Regulation:

(i) From 1 October 2025 to 30 September 2030, both employees and employers must contribute at a rate of 0.25% of the employees' wages; and

(ii) From 1 October 2030 onward, both employees and employers must contribute at a rate of 0.5% of the employees' wages.

### 2. Standard Form Reservation Agreement for Sales of Condominium Units

On 3 October 2024, the Contract Committee acting under the Consumer Protection Act B.E. 2522 (1979) issued the Notification of the Contract Committee Prescribing the Business of Selling Condominium Units Through Reservations as a Contract-Controlled Business B.E. 2567 (2025) ("**Condominium Notification**"), taking effect on 31 January 2025, 120 days after the date being published in the Government Gazette.

The Condominium Notification regulates the business of selling condominium units through reservations, where consumers pay a reservation fee or provide a similar benefit, not being classified as a down payment or deposit payment (i.e., not a part of total purchase price), as a guarantee that the buyer will then enter into a sale and purchase agreement for a condominium unit.

The Condominium Notification requires consumers and business operators to enter into a reservation agreement, written in the Thai language, using the standard form established in the Condominium Notification ("**Reservation Agreement**"). The standard form Reservation Agreement includes several key provisions, and notably grants consumers the right to terminate the Reservation Agreement and the reservation fee refunded in the following circumstances:

- If the business operator fails to obtain approval of the Environmental Impact Assessment (EIA);
- If the business operator fails to submit an application for condominium construction or fails to secure construction approval by the deadline set forth in the Reservation Agreement; and
- If business operator amends, changes, or modifies project plans, project details (if any), or construction materials without obtaining the consumer's consent.

### 3. New Criteria for Allowing a BOI-Promoted Foreign Company to Own Land to be used as Offices and for Residential Purposes

The Board of Investment ("**BOI**") recently issued Notification of the Office of the BOI No. 16/2567 (2024) re: Criteria for Allowing Promoted Foreign Companies to Hold Land Ownership for Office and Residential Purposes ("**BOI Notification**"), which came into effect on 1 November 2024.

This BOI Notification provides the criteria for foreign companies with BOI investment promotion and paid-up capital of at least THB 50 million to own land for office and residential purposes. Land ownership is limited to, for office use, 8,000 square meters and for residential use of employees at the operational level, 32,000 square meters. Such foreign companies must dispose the land within 1 year after losing their BOI-promoted status. The provision regarding the land for residential use of managers and technicians (as stated in Notifications of the Office of BOI Nos. 1/2551 and 6/2565) has been removed from this BOI Notification.

## Vietnam Authors: Vu Le Bang, Nguyen Thi Thanh Huong

### 1. Law No. 61/2024/QH15 on Electricity ("New EL")

The New EL was promulgated on 30 November 2024 and will take effect on 1 February 2025, replacing the current 2004 Law on Electricity (as amended). Among other relevant provisions, the New EL (i) in principle, promotes renewable energy sources, including solar, wind, and hydro power, and re-introduces nuclear power as an option for energy generation, (ii) reinstates the principle of bidding for energy projects in which there is interest from two or more investors, to ensure competitiveness, fairness, and transparency, with exemption from the bidding requirement being granted only to a few, limited projects, such as multi-purpose strategic hydropower plants, important transmission power grids, nuclear power plants, or direct power purchase projects, (iii) *inter alia,* instructs the Minister of Industry and Trade to develop a roadmap to improve the electricity retail price structure, including a multi-component retail electricity price system comprised of at least two components (e.g. capacity price, electricity price, fixed price, variable price, or other price components) that will apply to different groups of electricity users as long as technical conditions permit, and (iv) grants special mechanisms for offshore wind power projects, including direct appointment of investors, long-term minimum electricity offtake quantity, and exemptions from/reductions to land and sea usage fees.

### 2. Law No. 57/2024/QH15 on amendments and supplements to Law on Planning, Law on Investment, Law on Public-Private Partnership Investment, and Law on Bidding ("Amending Law")

On 29 November 2024, the National Assembly issued the Amending Law, which, *inter alia*, introduces a new special investment procedure, effective 15 January 2025. Pursuant to the new regulations, investors in projects that satisfy all of the following conditions may register their projects and obtain investment registration certificates ("**IRC**") without needing to obtain certain licenses and permits, such as investment policy approvals ("**IPA**"), technology appraisals, environmental impact assessment reports, detailed planning, construction permits, and fire prevention and fighting design approvals:

(i) Projects that are not subject to IPA by the National Assembly;

(ii) Projects located in an industrial zone, export processing zone, high-tech zone, concentrated information technology zone, free trade zone or functional zone in an economic zone; and

(iii) Projects that fall within the following sectors: (a) investments in building innovation centers and research and development (R&D) centers, investments in the field of semiconductor integrated circuit industry, design technology, manufacturing components, integrated electronic circuits (IC), flexible electronics (PE), chips, semiconductor materials; or (b) investments in high technology fields for which investment priority has been granted, or production of products on the list of high-tech products for which development is encouraged, based on the decision of the Prime Minister.

The Amending Law also amends some items relating to the termination of investment projects due to investor violations. Specifically, if investors fail to complete project objectives within 24 months after the expiration date listed in the schedule for implementation of project objectives (including phase schedules, if any) approved under the IPA, IRC, or amendment thereto, the authorities may decide to terminate the projects.

### 3. Decree No. 135/2024/ND-CP on structures and policies to encourage the development of self-production and self-consumption rooftop solar power ("Decree 135")

On 22 October 2024, the Vietnamese Government promulgated Decree 135, effective that same date, which contains the following notable regulations:

(i) "Rooftop Solar Power" ("**RTS**") and two distinct self-consumption RTS models: RTS is defined as electricity generated by photovoltaic panels that convert light into electricity through structures constructed and installed on the rooftops of buildings, connected to electricity equipment, and directly generating electricity. The two self-consumption RTS models are grid-connected RTS and off-grid RTS.

(ii) Registration/notification procedures: A notification of grid-connected RTS with capacity less than 1,000 kW must be made to the Department of Industry and Trade ("**DOIT**"), and to construction, firefighting, and local electricity authorities; grid-connected RTS with capacity of or greater than 1,000 kW must be registered with DOIT. However, off-grid RTS requires only notification to DOIT and to construction, firefighting, and local electricity authorities, regardless of capacity.

(iii) Sale of surplus power: Grid-connected RTS (only) is permitted to sell an amount of surplus power, up to 20% of capacity, subject to certain conditions, with an exception for RTS systems installed on the rooftops of office buildings classified as public assets or public properties, for which surplus power sale is not permitted.

## Myanmar Author: Saw Nyan Htun

### 1. Intellectual Property Agency Rules have been Issued

The Ministry of Commerce issued the Intellectual Property Rules (the "**Rules**") by Notification No. 88/2024 dated November 26, 2024. The Rules prescribes the qualifications of members of Intellectual Property Agency (the "**Agency**").
Key items of the Rules are as follows.

(1) The Agency must hold regular meeting at least once a month with more than half of members to be presented for the quorum and the decision should be made with majority approval.

(2) The Agency must form the working group with the approval of the Central Committee of Intellectual Property (the "**Central Committee**") to facilitate the following matters:
   (i) Appeal matter,
   (ii) Copyrights matter, and
   (iii) Patent matter.
   The Agency may also form other working groups as may be necessary.

(3) The Agency may, with the approval of the Central Committee, form the following appeal investigation working groups in order to investigate cases before the Agency:
   (i) Trademarks Appeal Investigation Working Group,
   (ii) Industrial Design Appeal Investigation Working Group,
   (iii) Patent Appeal Investigation Working Group,
   (iv) Copyrights Appeal Investigation Working Group, and
   (v) Geographical Indication Appeal Investigation Working Group.

(4) Any person who is not satisfied with any decision of the Registrar[17] may, within 60 days from issuance of the decision, appeal before the Agency by submitting particulars and documents prescribed under the Rules.

### 2. Service Fees Announcement for IP Registrations

The Agency issued Notification No. 2/2024 dated October 22, 2024. This Notification provides list of service fees regarding the registration of patent, utility model and so on. For example, the fee for the application of patent and utility model is: up to 5 claims and up to 20 pages – Myanmar Kyat (MMK) 500,000, more than 5 claims – MMK 20,000 for each claim and more than 20 pages – MMK 3,000 for each page.

The Department of Intellectual Property also issued the announcement No. 17/2024 dated November 5, 2024. This announcement provides list of service fees regarding copyrights related registrations. For example, according to this announcement, the fee for song is up to 12 songs – MMK 100,000.

[17] Registrar means the Director General of the Department of the Intellectual Property who carries out the functions relating to the registration of intellectual property.

## Taiwan Authors: Sheng-Chieh Chang, Chen-Hui An

## 1. Announcement of Draft Amendment to the Personal Data Protection Act

In response to a judgment by the Constitutional Court, which reviews the constitutionality of laws and court decisions, that an independent supervisory mechanism for personal data protection in Taiwan must be established by August 2025, the "Preparatory Office of the Personal Data Protection Commission" ("**Preparatory Office**") was established on December 5, 2023, to prepare for the establishment of a Personal Data Protection Commission ("**PDPC**"). On December 20, 2024, the Preparatory Office announced a draft amendment to the Personal Data Protection Act ("**PDPA**"). The main points of the draft amendment ("**Amendment**") governing the protection of personal data by non-government agency are summarized below.

(i) Non-government agencies designated by the PDPC must appoint a personal data protection officer

Non-government agencies designated by the PDPC that hold personal data equal to or greater than a certain scale or volume are required to appoint a personal data protection officer and assign personnel to serve as personal data auditors, who are responsible for planning, implementing, and supervising tasks related to managing the protection of personal data. (Amendment, Art. 2-1)

(ii) Non-government agencies shall keep records and notify the PDPC when personal data incidents occur

If a personal data leak or damage occurs at a non-government agency, the Amendment requires the agency to take measures to prevent escalation of the incident. In addition, information about the circumstances and impact of the incident, and the measures taken, must be recorded and retained for at least three (3) years (Amendment, Art. 12, Paragraph 1). If a personal data incident poses a potential significant risk of harm to data subjects' rights and interests, both the affected data subject(s) and the PDPC must be notified (Amendment, Art. 12, Paragraph 2). Failure to comply with the record-keeping or notification obligations in Article 12 may result in a fine of not less than NT $20,000 but not more than NT $200,000 (Amendment, Art. 48).

(iii) Inspections of non-government agencies by PDPC

The PDPC may conduct administrative inspections of non-government agencies, to assess and supervise their compliance with the PDPA. These inspections may include: (1) notifying the non-government agency or relevant personnel and requesting opinions, (2) requesting necessary documents, information, or goods, or cooperation with other inspections, and (3) dispatching personnel to enter the facilities independently or jointly with the competent central government authority in charge of the relevant industry, and ordering the agency's personnel to provide necessary explanations, cooperate with relevant measures, or submit supplementary information (Amendment, Art. 22). The Amendment authorizes the PDPC to prioritize industries at higher risk of personal data breaches for administrative inspections, after consulting with the competent central government authority in charge of the relevant industry. (Amendment, Art. 27)

## 2. Pilot launch of Pre-Application Consultation Service for Foreign Investors

On December 23, 2024 the Department of Investment Review ("**DIR**") of the Ministry of Economic Affairs ("**MOEA**"), the authority responsible for overseeing foreign investment regulations in Taiwan, introduced a prior consultation service for foreign investors planning to submit investment applications to the DIR, in an effort to enhance the investment environment and improve convenience for foreign investors.

According to the DIR's announcement about the prior consultation service (No. 11320901150, dated December 20, 2024), cases eligible for the prior consultation service include: (1) those relating to M&A, (2) situations in which the investment amount is NT $100 million or more, and (3) situations requiring clarification of application procedures and applicable laws and regulations for related investments. Applicants may make an appointment for review or consultation at the Pre-Consultation Service Office before submitting a formal investment application. The Pre-Consultation Service Office may perform a preliminary review of the investment plan and provide the applicant with an examination opinion. Applicants are required to submit a formal application to the DIR with the necessary documents within a certain period (in principle, 30 days) after obtaining a preliminary review opinion.

It is worth watching how introduction of the prior consultation service will impact the DIR's practices with regard to review of investments by foreign investors.

## Hong Kong Author: Ryuichi Sakamoto

## 1. Review of Three-Tier Banking System

Back in June 2023, the Hong Kong Monetary Authority ("**HKMA**") issued a public consultation paper on its proposal to simplify the current three-tier banking system, which comprises licensed banks ("**LBs**"), restricted licence banks ("**RLBs**") and deposit-taking companies ("**DTCs**"), into two tiers by merging DTCs into the RLB sector, thereby forming a new second-tier of the banking system. Specifically, the HKMA proposed to merge DTCs into RLBs, with a transition period of five years, with the current requirements for RLBs with respect to minimum capital (i.e., HK $100 million) and minimum deposit size (i.e., HK $500,000) applicable to all qualifying entities. After considering the feedback from the public consultations, on 5 August 2024, the HKMA published conclusions thereon with regard to review of the three-tier banking system ("**Conclusions Paper**"). In the Conclusions Paper, the HKMA introduces the following new parameters, to streamline the transition and minimise the impact on existing customers of DTCs:

(i) The HKMA intends to adopt an arrangement whereby existing DTCs will be converted to RLBs, without needing to submit fresh licence applications, after the DTCs demonstrate to the satisfaction of the HKMA that they meet the minimum capital requirements for an RLB, before the end of the 5-year transition period; and
(ii) It is intended that the converted RLBs may continue to hold and renew or roll over outstanding deposits accepted before the upgrade until the end of the 5-year transition period, subject to the pre-existing deposit size and maturity requirements for DTCs (HK $100,000 and 3 months, respectively).

The Conclusions Paper states that the HKMA will commence preparations for detailed legislative amendments to effect the proposed changes and provide guidance to DTCs on their transition to the new framework, and also work on publicity for the new framework.

## 2. Guidelines for Authorization of Digital Banks

On 25 October 2024, the HKMA published the Guidelines for Authorization of Digital Banks ("**Guidelines**") which supersede the previous Guidelines for Authorization of Virtual Banks issued on 30 May 2018 and sets forth the principles the HKMA will take into account when deciding whether to authorize digital banks. In addition to stating that the minimum criteria for authorization in the Seventh Schedule to the Banking Ordinance (Cap. 155) must be met, the Guidelines highlight the following points:

(i) **Ownership:** Digital banks are expected to operate in the form of locally incorporated banks, and any person who holds more than 50% of the share capital of a bank incorporated in Hong Kong should be a bank or a financial institution in good standing.
(ii) **Ongoing supervision**: Digital banks will be subject to the same set of supervisory requirements as conventional banks.
(iii) **Physical presence**: A digital bank applicant must maintain a physical presence in Hong Kong.
(iv) **Technology risk**: A digital bank applicant will be required to engage a qualified and independent expert to perform an independent assessment of the adequacy of its planned IT governance and systems.
(v) **Risk management**: An applicant must go through the basic types of risk identified in the risk-based supervisory framework of the HKMA, analyse the extent to which the applicant will be subject to these risks as a digital bank, and establish appropriate controls to manage these risks.
(vi) **Business plan**: A digital bank must be able to present a credible and viable business plan.
(vii) **Exit plan**: An applicant is required to provide an exit plan, in the event its business model turns out to be unsuccessful.
(viii) **Customer protection**: A digital bank should treat its customers fairly, adhere to the Treat Customers Fairly Charter, and observe the standards set forth in the Code of Banking Practice.
(ix) **Outsourcing**: Digital banks should discuss their plans for material outsourcing with the HKMA in advance.
(x) **Capital requirement**: Digital banks must maintain adequate capital, commensurate with the nature of their operations and the banking risks they undertake.

## China Author: Wenxian Cai

## 1. China's First Energy Law Enacted

On November 8, 2024, at the 12th session of the Standing Committee of the 14th National People's Congress, the *Energy Law of the People's Republic of China* ("**Law**") was formally adopted. The Law came into effect on January 1, 2025, after nearly 20 years of preparation. This milestone legislation establishes a comprehensive energy legal framework in China, with the Law serving as the apex of a system that includes supporting legislation such as the *Electric Power Law*, *Coal Industry Law*, and *Renewable Energy Law*. The Law is divided into 9 chapters: General Provisions, Energy Planning, Energy Development and Utilization, Energy Market Systems, Energy Reserves and Emergency Response, Energy Science and Technology Innovation, Supervision and Administration, Legal Liabilities, and Supplementary Provisions. A summary of some primary highlights is below:

(i) **Clarification of Scope.** The Law provides a clear definition of energy, notably recognizing hydrogen energy as a legitimate energy source. This marks a significant shift in classification, from hydrogen being regarded as a hazardous chemical to it being acknowledged as a viable energy resource.

(ii) **Priority Development of Renewable Energy.** The Law prioritizes the development of renewable energy sources, including hydropower, wind power, solar energy, biomass, geothermal energy, marine energy, and hydrogen energy. It also encourages the rational development of fossil fuels while promoting their clean and efficient use.

(iii) **Carbon Emissions Management.** The Law establishes a new framework, which shifts from energy consumption and energy intensity to dual control of total CO2 emissions and CO2 intensity, accelerating a comprehensive carbon control system and clarifying China's path to carbon neutrality by 2060.

(iv) **Counter-Sanctions Measures and Extraterritorial Application.** The Law states that if any country or region imposes discriminatory prohibitions, restrictions, or other similar measures against China, in the renewable energy industry or other energy fields, China reserves the right to take corresponding countermeasures as deemed appropriate. It also provides that foreign organizations or individuals who engage in activities that threaten China's national energy security will be held legally responsible.

## 2. The First Revision to the Anti-Money Laundering Law

The newly revised *Anti-Money Laundering Law of the People's Republic of China* ("**New Law**") was adopted at the 12th session of the Standing Committee of the 14th National People's Congress on November 8, 2024, and came into effect on January 1, 2025.This marks the first revision of the *Anti-Money Laundering Law* ("**Old Law**") since its original enactment in 2007. The New Law consists of 7 chapters and 65 articles; a summary of the key revisions is as follows:

(i) **Expansion of Predicate Offenses.** Under the Old Law, predicate offenses for money laundering were limited to specific crimes, including drug-related crimes, organized crimes by criminal syndicates, terrorism, smuggling, corruption and bribery, financial management offenses, and financial fraud. However, the New Law introduces a catch-all provision, by adding the words "other crimes," which expands the scope of predicate offenses to encompass all criminal activities.

(ii) **Clarification of Obligated Entities.** The New Law identifies domestic financial institutions and specific non-financial institutions as primary entities obligated to implement anti-money laundering measures. Non-financial institutions include (a) real estate developers or agents, (b) accounting firms, law firms, and notary offices offering specific services, and (c) dealers in high-value transactions involving precious metals or gemstones. Their obligations are limited to specific activities, considering industry characteristics, business scale, and money laundering risks, unlike the comprehensive requirements for financial institutions.

(iii) **Extraterritorial Application.** Money laundering and terrorist financing activities occurring outside China fall within the jurisdiction of the New Law if they endanger China's sovereignty or security, infringe on the rights and interests of Chinese citizens or entities, or disrupt the domestic financial order. The New Law also requires foreign financial institutions with correspondent banking accounts in China or close financial ties with China to cooperate with anti-money laundering investigations. Failure to comply may result in penalties, inclusion on the anti-money laundering blacklist, and special preventive measures.

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