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REGIONAL ROUND-UP 2022: PHILIPPINES



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CONTENTS

Introduction	3
Looking Back: 2022	4
Gazing Into: 2023	7
Key Contacts	10
Regional Contacts	12

Introduction



Throughout 2022, we have been keeping you up to date on noteworthy developments across the region with our Regional Round-up Publications. As we start 2023, we are pleased to share with you our *2022 year-in-review of the Regional Round-up* for our Offices in the Rajah & Tann Asia network.

In each jurisdiction, we recount the key milestones along the path in 2022, as well as consider the terrain of the road that lies ahead in 2023. In the "**Looking Back: 2022**" section, we highlight the key legal and regulatory developments affecting each jurisdiction in 2022. In the "**Gazing Into: 2023**" section, we look ahead to some key areas of development that you should take note of in the year to come, referencing the legal and business trends shaping the potential legislative and regulatory changes in each jurisdiction.

We hope that this year-in-review edition of the Regional Round-up provide valuable insight on the legal landscape of the jurisdictions across the region. As always, please feel free to contact our lawyers if you have any queries or for further discussions.

Please click on the links below to access the full collection of our country-specific *2022 year-in-review of the Regional Round-up*.

- [Cambodia](#)
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- [Thailand](#)
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Looking Back: 2022

2022 marked a year of significant transitions in the Philippines. Not only did the Philippines gradually transition from the stricter quarantine regulations brought about by the spike of Omicron COVID-19 cases at the beginning of the year to less restrictive measures, it also ushered in a new administration on 30 June 2022 headed by President Ferdinand Marcos Jr. Apart from these, there have also been much-needed substantial legal developments in the areas of **corporation law** and **foreign direct investments** aimed at easing foreign equity restrictions and, in part, as economic recovery measures from the effects of the COVID-19 pandemic.

Additionally, significant strides have also been made in the areas of **sustainability, banking and finance, and intellectual property**.

Summaries of the key developments relating to the above areas are provided below.

Corporate Commercial – Amendments to the Public Service Act to Ease Foreign Equity Limitations

On 21 March 2022, then President Rodrigo R. Duterte signed into law Republic Act No. 11659 which amended Commonwealth Act No. 146 (or the Public Service Act) ("**Amended PSA**"). The Amended PSA aims to strengthen the regulation of public services and processes for the protection of national security, and ensure a reasonable rate of return for these public services. The Amended PSA removes foreign equity restrictions for some entities by limiting the scope of what are considered as "public utilities". The Amended PSA expressly excluded certain types of services from the definition of "public utilities", for instance: (i) petroleum pipeline systems which are incidental to the operations of a distinct business, and (ii) transport vehicles accredited with and operating through transport network corporations. This allows 100% foreign equity in these excluded services subject to the requirements under relevant laws. Click [here](#) for more information.

Corporate Commercial – Amendments to the Retail Trade Act to Further Encourage Foreign Retail Enterprises to Do Business in the Philippines

On 10 December 2021, then President Rodrigo R. Duterte signed into law Republic Act No. 11595 which amended Republic Act No. 8762 (or the Retail Trade Liberalization Act of 2000) ("**Amended RTLA**"). The Amended RTLA substantially lowers the paid-up capital requirements for foreign retail enterprises to do business in the Philippines. The Amended RTLA removes the categories for pre-qualification under the old law, and lowers the minimum paid-up capital for all foreign-owned retail enterprises from US\$2.5 million to, and sets a single minimum paid-up capital of, at least PhP25 million



(approximately US\$463,000). In addition, the Amended RTLA standardises the minimum paid-up capital for foreign retailers engaged in retail trade through more than one physical store to at least PhP10 million (approximately US\$185,000) per store. Click [here](#) for more information.

Corporate Commercial – Philippine Competition Commission Adjusts Threshold for M&A Notification

The Philippine Competition Commission ("PCC"), through Commission Resolution No. 18-2022, has adjusted the compulsory notification threshold for mergers and acquisitions as follows: (i) from PhP6 billion in 2020 to PhP6.1 billion for the Size of Party ("SoP"), and (ii) from PhP2.4 billion in 2020 to PhP2.5 billion for the Size of the Transaction ("SoT"). Previously, all mergers and acquisitions with SoP or SoT below PhP50 billion were exempt from compulsory notification and review by PCC under Republic Act No. 11494, otherwise known as the Bayanihan to Recover as One Act. The new threshold set by PCC became effective on 16 September 2022 following the lapse of the period set under the Bayanihan to Recover as One Act on 15 September 2022. Click [here](#) for more information.

Corporate Commercial – Amendments to Foreign Investments Act to Loosen Restrictions on Foreign Entrants and Boost Recovery after COVID-19

On 2 March 2022, then President Rodrigo R. Duterte signed into law Republic Act No. 11647 which amended Republic Act No. 7042 (or the Foreign Investments Act of 1991) ("**Amended FIA**"). The Amended FIA aims to attract and promote productive investments in activities which significantly contribute to sustainable, inclusive, resilient, and innovative economic growth, productivity, global competitiveness, employment creation, technological advancement, and countrywide development to the extent that foreign investment in such activities is allowed under the Philippine Constitution and relevant laws. Click [here](#) for more information.

Sustainability – Electric Vehicle Industry Development Act to Develop Electric Vehicle Industry

On 15 April 2022, Republic Act No. 11697 (or the Electric Vehicle Industry Development Act) ("**EVIDA**"), lapsed into law. Against the backdrop of rising fuel prices, the EVIDA promises energy security and independence by reducing reliance on imported fuel for the transportation sector and by facilitating the development of electric vehicles ("**EVs**"). The EVIDA seeks to generate demand for EVs and develop the EV industry by requiring at least 5% of the fleet of industrial and commercial companies, public transport operators, local government units, national government agencies, and government-owned and controlled corporations to be EVs. The EVIDA seeks to eventually convert the entire fleet of the foregoing entities to be EVs by gradually increasing the percentage of EVs in these entities. Click [here](#) for more information.

Intellectual Property – Amendments to IP Rules and Regulations Result in Streamlined Procedure for *Inter Partes* Proceedings

The Intellectual Property Office of the Philippines ("**IPOPHL**") issued Memorandum Circular No. 2022-013 on the Amendments to the Rules and Regulations on *Inter Partes* Proceedings ("**Amended Rules**"), which took effect on 30 June 2022. The Amended Rules aim to modernise the procedure for the adjudication of intellectual property cases by using information and communication technology, and to streamline the procedure in *inter partes* cases to improve the accessibility, resiliency, and cost efficiency of IPOPHL's services. *Inter partes* proceedings include oppositions to applications for trademark registration, petitions to cancel registration, and petitions for compulsory licensing. Click [here](#) for more information.

Banking & Finance – Supervisory Technology and Regulatory Technology for Cyber Resilience

On 1 September 2022, the Bangko Sentral ng Pilipinas ("**BSP**") launched the Advanced Supervisory Technology ("**SupTech**") Engine for Risk-based Compliance, otherwise known as ASTERisC, for deployment among selected BSP-supervised Financial Institutions ("**BSFIs**"). The primary purpose of ASTERisC is to strengthen and enhance the cyber resilience of banks nationwide and to protect consumers, especially considering the current

increase in the use of digital payments. According to BSP, ASTERisC is a unified regulatory technology ("**RegTech**") and SupTech solution that streamlines and automates regulatory supervision, reporting, and compliance assessment of BSFIs' cybersecurity management. BSP's RegTech and SupTech solution is the next generation digital supervision tools and techniques aimed at enhancing the timeliness and quality of risk-based decision making. Click [here](#) for more information.

Banking & Finance – Bangko Sentral ng Pilipinas Modifies Approach to Licensing VASPs

In Memorandum No. M-2022-035, Bangko Sentral ng Pilipinas ("**BSP**") introduced a modified approach in granting new Virtual Asset Service Provider ("**VASP**") licences that are approved by the Monetary Board. BSP recognised that while VASPs offer opportunities to promote greater access to financial services at reduced costs, they also pose varied risks which could undermine financial stability. In view thereof, BSP seeks to strike a balance between promoting innovation in the financial sector and ensuring that associated risks remain within manageable levels. Under the modified approach, the regular application window for new VASP licences shall be closed for a period of three years starting 1 September 2022, while only existing BSFIs may be granted new VASP licences. BSP further highlighted that the said closure is subject to re-assessment based on market developments. Click [here](#) for more information.

Gazing Into: 2023

*With a new President taking the helm of one of the hardest-hit economies in the COVID-19 era, novel solutions are being proposed and executed by policymakers in the Philippines to ease the burdens shouldered by the low-income public, particularly in the areas of **energy & resources** and **tax**. Measures are likewise being explored and implemented in the fields of **technology, media**, and **telecommunications** to regulate the growing e-commerce market and protect the public from cyber-crimes and digital frauds. Regulators in the corporate sector will also begin introducing new developments in the areas of **banking and finance** as well as **sustainability**.*



Summaries of the key developments relating to the above areas are provided below.

Energy & Resources – Congress Vows to Pass Electric Power Industry Reform Act Amendments

As President Ferdinand Marcos Jr. intends to lower the cost of electricity in the Philippines, Congress has vowed to amend Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 in 2023 as part of the remaining Common Legislative Agenda items from the Legislative-Executive Development Advisory Council. One of the proposed amendments seeks to specifically allow the Government to invest in nuclear power generation. This initiative is integral to the reignited clamor for nuclear power as an alternative energy source in the Philippines.

Energy & Resources – Department of Energy Allows 100% Foreign Equity Ownership over Renewable Energy Projects

On 29 September 2022, the Department of Justice ("DOJ") rendered an Opinion that the maximum 40% foreign equity restriction on the exploration, development, and utilisation of natural resources under the 1987 Philippine Constitution should not apply to renewable sources of energy such as solar, wind, biomass, or tidal. DOJ opined that renewable sources of energy are (i) inexhaustible, which brings them beyond the ambit of the term "natural resources"; and (ii) as kinetic energy, these are excluded from the term "all forces of potential energy." On 15 November 2022, the Department of Energy ("DOE") issued Department Circular No. 2022-11-034 ("DOE Circular") which amended Section 19 of the Implementing Rules and Regulations of Republic Act No. 9513 or the Renewable Energy Act of 2008 that previously imposed the 40% foreign equity restriction. With the DOE Circular paving the way for increased foreign ownership of renewable energy projects, DOE anticipates remarkable growth in the renewable energy sector, genuine competition among the players, and energy security in the country.

Energy & Resources – Adoption of Electric Vehicle Roadmap to Strengthen the Philippine Electric Vehicle Industry

On 6 September 2022, DOE issued the Implementing Rules and Regulations of the Electric Vehicle Industry Development Act ("**EVIDA IRR**") after public consultations with government agencies and stakeholders. The EVIDA IRR require a minimum 5% share of electric vehicles ("**EVs**") in the Government's vehicle fleet, specifications for dedicated charging stations and parking slots, and fiscal and non-fiscal incentives for consumers to shift to EVs. The EVIDA IRR likewise mandates the development of the Comprehensive Roadmap for the Electric Vehicle Industry ("**CREVI**"), which is expected to be released by the first quarter of 2023. The CREVI is the national framework for the national EV industry and is reported to include short-term, medium-term, and long-term goals, with the ultimate objective to fully adopt EVs nationwide by 2040.

Technology – National Telecommunications Commission Releases Implementing Rules of SIM (Subscriber Identity Module) Card Registration Law

Following the enactment of Republic Act No. 11934 or the Subscriber Identity Module ("**SIM**") Registration Act, the National Telecommunications Commission issued the Implementing Rules and Regulations ("**IRR**"), which took effect on 27 December 2022. The IRR requires all end-users to register their SIM cards with their respective Public Telecommunication Entities ("**PTEs**") within 180 days, or until 26 April 2023. Failure to register the existing SIM card within the period prescribed shall result in the automatic deactivation of the SIM card. Notwithstanding the confidentiality provisions of the law, PTEs shall be required to disclose the full name and address of an end-user in compliance with, among others, any law requiring such disclosure, or a court order or legal process upon finding of probable cause, in furtherance of the objective of cybercrime prevention and punishment.

Technology – Proposed Internet Transactions Act Receives Final House Nod

On 12 December 2022, the House of Representatives unanimously approved House Bill No. 4 or the proposed Internet Transactions Act ("**ITA**") on its final reading. The ITA seeks to regulate all business-to-business and

business-to-consumer commercial activities that are conducted through the Internet for the protection of online consumers and merchants, and establish the E-Commerce Bureau. All entities, foreign or domestic, desiring to engage in e-commerce in the Philippine markets shall be covered by the proposed measure, including ride hailing service providers. The bill also enumerates the rights and obligations of all online participants and provides for an online dispute resolution platform.

Banking & Finance – Bangko Sentral ng Pilipinas Issues Amendments on Credit Exposure Limits to a Single Borrower and Definition of Capital

On 5 January 2023, Bangko Sentral ng Pilipinas ("**BSP**") issued Circular No. 1164, which introduces amendments to the regulations on Single Borrower's Limit ("**SBL**"), particularly on credit risk transfer ("**CRT**") arrangements, and expands the definition of capital used in determining compliance with varied prudential limits. The amended SBL regulations prescribe minimum operational requirements for a CRT arrangement to be considered effective. The credit transactions covered by CRT arrangements no longer require prior approval of BSP to be excluded from the total credit commitment of a bank to a borrower in reckoning compliance with the SBL. To minimise disruption in the lending operations of banks and to provide banks with a reasonable time to make necessary adjustments, the amended SBL regulations will take effect on 1 July 2023.

Tax – Lowered and Simplified Income Tax on Compensation Takes Effect

Beginning 1 January 2023, employers shall use the Revised Withholding Tax Table for the computation of withholding taxes on compensation income of their employees, pursuant to Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law which took effect on 1 January 2018. Lower tax rates will be applicable to individuals earning compensation income beginning 2023. Additionally, the filing of the monthly value-added tax ("**VAT**") returns is no longer required. However, VAT-registered taxpayers are still required to file their quarterly returns.

Sustainability – Mandatory Sustainability Reporting for Publicly Listed Companies in 2023

Since 2019, the Securities and Exchange Commission ("**SEC**") has issued sustainability reporting guidelines for publicly listed companies ("**PLCs**") in the Philippine Stock Exchange. While compliance rate has been high (over 90%) since SEC required PLCs to report on a comply-or-explain basis, sustainability reporting will now become mandatory for PLCs in 2023. There is also a proposal to introduce an Environmental, Social, and Governance (ESG) compliance index for PLCs as a guide for sustainability-focused investors. Moreover, SEC is looking to introduce sustainability reporting among unlisted companies on a comply-or-explain basis, hinting that a mandatory approach may likewise be adopted in the future.

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