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Asia Pacific

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I. Australia

A. GENERAL MATTERS

Federal legislation was passed in 2016, including the *Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Act 2016* (No. 7, 2016),¹ *Offshore Petroleum and Greenhouse Gas Storage Amendment Act 2016* (No. 13, 2016),² *Courts Administration Legislation Amendment Act 2016* (No. 24, 2016),³ and *Northern Australia Infrastructure Facility Act 2016* (No. 41, 2016).⁴

B. PUBLIC INTERNATIONAL LAW

The Australian courts were involved in a series of cases that touched upon public international law. One court held no customary international legal rule or general principle existed under which an individual can acquire rights of private ownership over *terra nullius*—here, islands not yet claimed by any State—which States must recognize.⁵ In another case, Nauru was held to be immune from jurisdiction after an indemnity was sought for counter-claims it made.⁶ The court also examined immunity when assessing the income tax liability of a former officer of international organizations.⁷

Other cases addressed an attempt to identify patients, which was rejected by reference to privacy.⁸ Likewise, a smoking ban was assessed in light of a patient's right to dignity.⁹ The court also looked at individual liberty, in the

1. *Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Act 2016* (Cth) (Austl.).

2. *Offshore Petroleum and Greenhouse Gas Storage Amendment Act 2016* (Cth) (Austl.).

3. *Courts Administration Legislation Amendment Act 2016* (Cth) (Austl.).

4. *Northern Australia Infrastructure Facility Act 2016* (Cth) (Austl.).

5. See *Ure v The Commonwealth* [2016] 236 FCR 458 (Austl.).

6. See *Bannon v Nauru Phosphate Royalties Trust* [No.1] [2016] 311 FLR 93 (Austl.).

7. See *Commissioner of Taxation v Jayasinghe* (Unreported, Federal Court of Australia, Allsop CJ et al., 9 June 2016).

8. See *Tikiri Pty Ltd v Fung* (Unreported, Supreme Court of Victoria, Ierodiaconou AsJ, 5 Aug. 2016) (Austl.).

9. See *De Bruyn v Victorian Inst of Forensic Mental Health* [2016] 48 VR 647 (Austl.).

context of executive power, that prolonged detention.¹⁰ Finally, the court determined that the construction given under Australian law to “intentionally inflicted” in the definitions of “torture” and “cruel or inhuman treatment or punishment” and of “intended to cause” in the definition of “degrading treatment or punishment” did not require considering treaties.¹¹

With respect to international child abduction, one court overturned a finding that a child could be habitually resident in two States. Another court determined that no judicial discretion existed to order a child’s return if settled in Australia.¹²

Other court decisions in Australia included, *inter alia*:

- A Commonwealth law authorizing Australia’s participation in detaining asylum seekers on Nauru was constitutionally valid.¹³
- The application of the foreign act of State doctrine.
- Australia’s non-refoulement obligations.¹⁴
- Non-mandatory considerations when cancelling visas because protection visa applications can be made.¹⁵
- Amendments in a class action by asylum seekers detained on Christmas Island, determining that Australia had a duty of care to provide healthcare to them.¹⁶
- The Minister for Immigration and Border Protection (MIBP) was obliged to exercise reasonable care to discharge the responsibility he assumed to procure an abortion for an asylum seeker relocated to Papua New Guinea.¹⁷
- The consistency of trade practices legislation with Australia’s international obligations was considered.¹⁸
- An application to set aside an arbitral award by reference to the Model Law on International Commercial Arbitration was unsuccessful.¹⁹

10. See *Foster v Shaddock* (Unreported, Supreme Court of Queensland, Atkinson J, 17 June 2016) 43 (Austl.).

11. See *SZTAL v Minister for Immigration and Border Protection* [2016] 243 FCR 556 (Austl.).

12. See *State Cent Auth. & Gedeon* (Unreported, Family Court of Australia, Dawe J, 5 Aug. 2016).

13. See *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2016] 257 CLR 42 (Austl.).

14. See *BCR16 v Minister of Immigration and Border Protection* (Unreported, Federal Court of Australia, Moshinsky J, 17 Aug 2016) (Austl.).

15. See *Minister of Immigration and Border Protection v Le* (Unreported, Federal Court of Australia, Allsop CJ, 9 Sep 2016).

16. See *AS v Minister of Immigration and Border Protection (Ruling No 4)* (Unreported, Supreme Court of Victoria, Forrest J, 30 June 2016) (Austl.).

17. See *Plaintiff S99/2016 v Minister of Immigration and Border Protection* [2016] 243 FCR 17 (Austl.).

18. See *Australian Competition and Consumer Comm’n v P T Garuda Indonesia Ltd* [2016] 244 FCR 190.

19. See *Sino Dragon Trading Ltd v Noble Resources Int’l Pte Ltd* (Unreported, Federal Court of Australia, Beach J, 13 Sep 2016).

Courts also reviewed an unsuccessful challenge to a ministerial decision to approve a coal mine project, given emission impacts on the Great Barrier Reef, which occasioned consideration of the precautionary principle and Australia's obligations under the World Heritage Convention.²⁰ Additionally, a claim on a maritime lien so characterized under the law of the place where it attached will be maintainable in Australia even if no such lien would attach if the same events occurred in Australia.²¹

C. PRIVATE INTERNATIONAL LAW

Several cases impacting private international law were also decided in 2016. One court discussed when foreign judgments were sought to be recognized and enforced.²² Another court set aside a judgment because the foreign court lacked jurisdiction.²³ Another court stayed the execution of a registered judgment pending appeal in the foreign court.²⁴

Other cases on private international law included:

- The “conflict of laws” clause in the Australian Consumer Law in circumstances in which the real and closest connection of a contract was not Australian law.²⁵
- Seeking to serve subpoenas on foreign entities located outside Australia.²⁶
- Not infringing on the comity of nations;
- The relevancy of a State's banking secrecy laws;²⁷ and
- Consideration of certain articles of the Model Law on Cross-Border Insolvency.²⁸

20. See *Australian Conservation Found Inc v Minister for the Env't* (Unreported, Federal Court of Australia, Griffiths J, 29 Aug 2016).

21. See *Ship “Sam Hawk” v Reiter Petroleum Inc* (Unreported, Federal Court of Australia, Allsop CJ et al., 28 Sep 2016).

22. See *Talacko v Talacko* (Unreported, Supreme Court of Victoria Court of Appeal, Ashley JA et al., 28 July 2016) (Austl.); see also *Bank of South Pac Tonga v Emberson* (Unreported, Supreme Court New South Wales, Wilson J, 1 Apr 2016) (Austl.); see also *Resorts World at Sentosa Pte Ltd v Kok* (Unreported, Supreme Court of Western Australia, Sanderson Master, 30 Mar 2016).

23. See *Privatbrauerei Erdinger Weissrau Werner Brombach Gmbh v World Brands Australia Pty Ltd* (Unreported, Supreme Court of Western Australia, Gething AMaster, 15 Jan 2016).

24. See *LFDB v SM (No 2)* (Unreported, Federal Court of Australia, Griffiths J, 23 Mar 2016).

25. See *Australian Competition and Consumer Comm'n v Valve Corp (No 3)* (Unreported, Federal Court of Australia, Edelman J, 24 Mar 2016).

26. See *Titan Enter (Qld) Pty Ltd v Cross* (Unreported, Federal Court of Australia, Logan J, 19 Oct 2016).

27. See *Ceramic Fuel Cells Ltd (In Liq) v McGraw-Hill Fin, Inc (No 2)* (Unreported, Federal Court of Australia, Wigney J, 10 Aug 2016).

28. See *Legend Int'l Holdings Inc (as debtor in possession of the assets of Legend Int'l Holdings Inc) v Legend Int'l Holdings Inc* (Unreported, Supreme Court of Victoria, Randall AsJ, 2 June 2016) (Austl.); see also *Wood v Astra Res Ltd (UK Co No 07620218)* (Unreported, Federal Court of Australia, White J, 7 Oct 2016).

D. OTHER DEVELOPMENTS

Significant treaty action included the entry into force of implementing resolutions from the International Maritime Organisation, an air services agreement with Laos, and an agreement on port state measures to prevent illegal fishing.

Developments also arose in international arbitration. The Permanent Court of Arbitration determined that it lacked jurisdiction to consider claims by Philip Morris Asia Ltd. and that Australia's plain packaging legislation was expropriation under an investment protection agreement.²⁹ A Commission decided that it was competent to continue conciliation concerning the maritime boundary between Timor-Leste and Australia.³⁰

II. Japan

A. CONSTITUTIONAL CHANGES³¹

Japan's lower house of parliament voted in September 2015 to allow Japanese Self Defense Forces (SDF) to participate in military action even though Japan is not directly threatened. Following Upper House elections in July 2016, the ruling Liberal Democratic Party now has enough votes in both houses of the Parliament to propose actual changes to the law.³² The proposal is still controversial with most people opposed to any change.

A bill passed in 2015 that lowered the age for voting to eighteen years of age. The law took effect in June 2016 just in time for the Upper House election on July 10. The increase in the number of voters was estimated to be only two percent, and many people in the new voter rolls may have been unaware of the change or did not participate in the vote. Following that change, further discussions suggested lowering the Age of Majority from the current age twenty to age eighteen by amending the Civil Code.³³

29. Philip Morris Asia Ltd (China) v. Commonwealth (Austl.), Case No. 2012-12, Award on Jurisdiction and Admissibility (Perm. Ct. Arb. 2015), http://www.italaw.com/sites/default/files/case-documents/italaw7303_0.pdf.

30. Conciliation between Timor-Leste and Commonwealth (Austl.), Case No. 2016-10, PCA Case Repository, Decision on Competence (Perm. Ct. Arb. 2016).

31. The Japan sections on Constitutional Changes and Cyber Law were authored by Steve Saunders. The Japan section on Significant Changes in Business Law in Japan in 2016 was contributed by Naoko Inoue Shatz and Kyota Konnai. Naoko Inoue Shatz is the managing attorney at Shatz Law Group PLLC and licensed to practice in Washington State and New York State. Her primary areas of practice are corporate law, employment law, and commercial litigation. Kyota Konnai is a visiting foreign attorney at Shatz Law Group PLLC and licensed to practice in Japan (temporarily inactive while in the United States).

32. *Diet Panel Reopens Talks on Constitutional Revision for First Time Since February*, THE JAPAN TIMES (Nov. 16, 2016), <http://www.japantimes.co.jp/news/2016/11/16/national/politics-diplomacy/diet-panel-reopens-talks-constitutional-revision-first-time-since-february/#page>.

33. Reiji Yoshida, *Age of Adulthood Targeted for Revision Next Year*, THE JAPAN TIMES (Sep. 1, 2016), <http://www.japantimes.co.jp/news/2016/09/01/national/age-adulthood-targeted-revision-next-year/#.WPk181MrLV0>.

B. CYBER LAW

In October 2014, the Tokyo District Court ordered Google to remove information from its search engine about a man who was alleged to have been involved in criminal activity. In December 2015, the same court also ordered Yahoo to remove the same information from its search engine database. The court reasoned that it was a violation of the plaintiff's right to privacy. On December 8, 2015, the Sapporo District Court also issued an injunction requiring Google to remove information about the plaintiff's arrest and fine in 2003. The judge ruled that this was no longer a socially significant issue.³⁴ The decision seems to parallel developments in personal privacy rights in the European Union.

C. SIGNIFICANT CHANGES IN BUSINESS LAW IN JAPAN IN 2016

First, the amendment to the Companies Act came into effect on May 1, 2015. In particular, Article 327-2 of the amended Act requires publicly traded companies to explain, during their annual shareholders meetings, their reasons why it is not appropriate to have an outside director who is familiar with foreign investments. The Act does not mandate the companies subject to compliance to appoint an outside director, yet 95.8 percent of the publicly traded companies have designated at least one outside director as of July 14, 2016.³⁵

This amended Act also requires publicly traded companies to provide a new corporate governance audit and supervisory committee by way of a "Company with Audit and Supervisory Committee."³⁶ This caused about 680 out of about 3,500 publicly traded companies to set up their internal audit and supervisory committee by June 2016.³⁷

Second, the Securities Listing Regulations Rule 436-3 and Rule 445-3 regarding Japan's Corporate Governance Code were created and became effective in June 2015. Rule 436-3 requires publicly traded companies to explain reasons for compliance or non-compliance with seventy-three Principles of the Corporate Governance Code in their "Report Concerning

34. *Yahoo, Google Ordered by Courts in Tokyo, Sapporo to Cut Search Results Suggesting Criminal Behavior*, THE JAPAN TIMES (Dec. 8, 2015), <http://www.japantimes.co.jp/news/2015/12/08/national/crime-legal/court-tells-yahoo-japan-like-told-google-strike-search-results-plaintiff/#.VpsV11KNPig>.

35. TOKYO STOCK EXCHANGE, INC., APPOINTMENT OF INDEPENDENT DIRECTORS BY TSE-LISTED COMPANIES [FINAL FIGURES] 5 (2016), available at <http://www.jpx.co.jp/english/news/1020/b5b4pj00000170dd-att/20160727-2.pdf>.

36. Kaisha-ho [Companies Act], Law No. 86 of 2005, art. 327 (Japan), translated in (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp> (Japan).

37. US ISS "Four or More Outside Directors" Requested Company with Audit Committee, NIKKEI SHUNBUN (Japan), July 2, 2016, <http://www.nikkei.com/article/DGXLZO04372280R00C16A7DTA000/>.

Corporate Governance.”³⁸ Because Principle 4.8 under Rule 436-3 of the Corporate Governance Code requires publicly traded companies to appoint at least two independent directors, 60.4 percent of the companies subject to the compliance had designated more than two independent directors as of July 14, 2016.³⁹

Third, the government published several administrative orders to create an enforcement mechanism under the Revised Act on the Protection of Personal Information in 2016. In 2015, this Act created a new category of highly protected personal information, called “sensitive personal information,”⁴⁰ and authorized the usage of numerous anonymous data for business purposes. To ensure compliance with the Act, these administrative orders became effective in January 2017.⁴¹

Finally, two revisions of competition laws became effective in 2016. Those are: (1) the Revised Unfair Competition Prevention Act, which strengthens protections of trade secrets;⁴² and (2) the Revised Act against Unjustifiable Premiums and Misleading Representations, which creates new enforcement method to prevent misleading representations in businesses.⁴³

III. Malaysia⁴⁴

A. COMPANIES ACT 2016

The Companies Act 2016 introduces extensive changes to the existing company law regime in Malaysia in line with modern business practices by simplifying procedures and reducing costs while improving internal controls, governance, and corporate responsibility.⁴⁵ The Act enables incorporation of single-member, single-resident director companies; however, the need to have two resident directors for public companies is retained. Additionally, the Memorandum and Articles of Association will be replaced with an optional Constitution. The Act will set out default processes and provisions

38. TOKYO STOCK EXCHANGE, INC., YUKASHOKEN JYOJYO KITEI (SECURITIES LISTING REGULATIONS) 80 (2016), available at [http://www.jpx.co.jp/english/rules-participants/rules/regulations/tvdivq0000001vyt-att/securities_listing_regulations_\(r1-r826\)_20161104.pdf](http://www.jpx.co.jp/english/rules-participants/rules/regulations/tvdivq0000001vyt-att/securities_listing_regulations_(r1-r826)_20161104.pdf).

39. TOKYO STOCK EXCHANGE, INC., *supra* note 35, at 4.

40. Kojin joho hogo ho [Act on the Protection of Personal Information], Law No. 65 of 2015, art. 2 para. 3 (Japan), translated in (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp> (Japan).

41. *See id.*, art. 36.

42. Fusei kyoso boshi ho [Unfair Competition Prevention Act], Law No. 54 of 2015, art. 2 para. 1–10, art. 5 para. 2 (Japan), translated in (World Trade Organization), <http://www.wto.org>.

43. Futo keihinrui oyobi futo hyoji boshi ho [Act Against Unjustifiable Premiums and Misleading Representations], Law No. 118 of 2014, art. 8 (Japan), translated in (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp> (Japan).

44. The Malaysia section was authored by Yap Yeong Hui and Trishelea Sandosam.

45. Bernama, *Dewan Rakyat Passes Companies Bill 2015 with Amendment*, NEW STRAITS TIMES (Apr. 5, 2016), <http://www.nst.com.my/news/2016/04/137304/dewan-rakyat-passes-companies-bill-2015-amendment>.

necessary for a company to function, and if a company wants to tailor certain provisions to meet its own needs, it can adopt a Constitution. The Act also introduces a no-par value regime. All shares of a company shall have no par or nominal value, which means that companies need not set any minimum value for shares.

The Act dispenses the requirement for annual general meetings for private companies. Audited accounts are no longer laid before the AGM for private companies. Instead, there will be a timeline to circulate the audited accounts among the shareholders and then for filing with the Companies Commission of Malaysia. In addition, the Act introduces two new corporate rescue mechanisms: corporate voluntary arrangement (“CVA”) and judicial management.⁴⁶ The CVA is a procedure that allows a company to put up a proposal to its creditors for a voluntary arrangement. The implementation of the proposal is supervised by an independent insolvency practitioner who would report to the Court on the viability of the proposal. The judicial management mechanism allows a company or its creditors to apply for an order to place the management of a company in the hands of a qualified insolvency practitioner. A moratorium would give the company temporary respite from legal proceedings by its creditors.

Although passed by the Parliament on April 28, 2016, the Act has yet to come into force.⁴⁷ It is expected that the Act will come into force in stages as early as the first quarter of 2017.⁴⁸

B. NATIONAL LAND CODE

The National Land Code was amended to, *inter alia*, require foreign citizens and foreign companies to seek state authority approval before acquiring industrial land or interest therein in West Malaysia. The National Land Code (Amendment) Act 2016 also sets out regulations to introduce and facilitate deposit of instruments through electronic means.⁴⁹

C. NATIONAL SECURITY COUNCIL (NSC) ACT 2016

The NSC Act 2016 came into force on August 1, 2016. It allows for the establishment of the NSC, chaired by the Prime Minister of Malaysia, which has wide powers of entry, search, and seizure in “security” areas declared by

46. The Companies Act 2016 is not yet in force. Companies Act 2016 (Act No. 777/2016) (Malay.).

47. *Companies Bill 2015 to Take Effect Next Year*, THE STAR (Sep. 6, 2016), <http://www.thestar.com.my/business/business-news/2016/09/06/companies-bill-2015-to-take-effect-next-year/>.

48. *See id.*

49. The amendments are not yet in force. National Land Code (Amendment) Act 2016 (Act No. A1516/2016) (Malay.).

the Prime Minister.⁵⁰ The Bar Council of Malaysia has expressed concern over the vast executive powers conferred to the NSC.⁵¹

D. TRANS-PACIFIC PARTNERSHIP AGREEMENT (“TPPA”)

Malaysia signed the TPPA on February 4, 2016.⁵² Touted as a vehicle to increase market access for Malaysian businesses, the TPPA was overwhelmingly approved by both houses of Parliament on January 27 and 28 of 2016, respectively.⁵³

E. KEY EMPLOYMENT LEGISLATION

The Minimum Wages Order 2016 increased the minimum wages from RM900 to RM1000 per month for employees in West Malaysia and from RM800 to RM920 for those in East Malaysia.⁵⁴ Regarding Social Security, the Employees Provident Fund Act 1991 (EPF Act) was amended to provide for payment of contributions in accordance with Sharia principles.⁵⁵ Additionally, the Employees’ Social Security Act 1969 (ESSA 1969) now requires all employees, irrespective of wages, to contribute and be insured under the Act.⁵⁶

50. National Security Council Act 2016 (Act No. 776/2016) (Malay.).

51. Press Comment, Steven Thiru, National Security Council Act 2015 Has All the Hallmarks of Authoritarianism (June 15, 2016), http://www.malaysianbar.org.my/press_statements/press_comment_%7C_national_security_council_act_2015_has_all_the_hallmarks_of_authoritarianism.html.

52. Rebecca Howard, *Trans-Pacific Partnership Trade Deal Signed, But Years of Negotiations Still to Come*, REUTERS (Feb. 4, 2016), <http://www.reuters.com/article/us-trade-tpp-idUSKCN0VD08S>.

53. *Mustapa: TPPA Promises Greater Market Access*, THE STAR (Feb. 4, 2016), <http://www.thestar.com.my/business/business-news/2016/02/04/mustapa-says-tppa-promises-greater-market-access/>.

54. This includes employees paid based on piece rate, tonnage, trip, or commission. The Minimum Wages Order 2016 also sets out new daily and hourly minimum wage rates. Minimum Wages Order 2016, P.U. (A) 116 (Apr. 29, 2016) (Malay.).

55. The EPF Act governs Malaysia’s mandatory savings scheme aimed at providing financial security for employees in their retirement. It was amended through the Employees Provident Fund (Amendment) Act 2016, which was fully in force on August 1, 2016. Employees Provident Fund (Amendment) Act 2016 (Act No. A1504/2016) (Malay.).

56. The ESSA 1969 provides social security coverage for employees and their dependents in case of contingencies, like injury during the course of employment, invalidity, or death, as well as occupational diseases. The amendments were made via the Employees’ Social Security (Amendment) Act 2016, which came into force on June 1, 2016. Employees’ Social Security (Amendment) Act (Act No. A1508/2016) (Malay.).

F. NEW PUBLIC SECTOR APPOINTMENTS

Datuk Muhammad Ibrahim was appointed the eighth Governor of the Central Bank of Malaysia for a five-year term effective May 1, 2016.⁵⁷ Datuk Dzulkifli Ahmad, a senior officer with the Attorney-General's Chambers, was appointed the new Malaysian Anti-Corruption Commission (MACC) Chief Commissioner, effective August 1, 2016 to July 2021.⁵⁸ These new appointments to two of the most important public bodies in Malaysia came on the back of appointment of a new Attorney General in the second half of 2015.⁵⁹

IV. Myanmar⁶⁰

Myanmar saw significant changes on the political and legal front with an elected parliament coming into place in early 2016. The National League for Democracy (NLD) formed the Government, and U Htin Kyaw was elected President, “essentially as a proxy” for the NLD leader Aung San Suu Kyi, “who is constitutionally barred from being the president.”⁶¹

A. LEGISLATIVE REFORMS

To encourage real estate investment, Myanmar's Union Parliament passed the Condominium Bill on January 22, 2016.⁶² According to this law, foreigners are now allowed to own land in Myanmar. Total foreign ownership is limited to forty percent; however, there is a restriction on management of the condominium building.⁶³

The Banks and Financial Institutions Law,⁶⁴ enacted on January 25, 2016, aims to reform Myanmar's banking regulations by laying down guidelines for commercial, state-owned, private, and foreign banks. It also includes rules of operation for nonbanking financial institutions and development banks. The law has introduced provisions for minimum capital requirement, raising paid up capital, and reserve requirements.

57. Press Release, Announcement of Bank Negara Malaysia Governor by Prime Minister Najib Razak (Apr. 27, 2016), http://www.bnm.gov.my/index.php?ch=en_press&pg=en_press&ac=4159&lang=en.

58. Farik Zolkepi, *Dzulkifli Ahmad is New MACC Chief*, THE STAR (July 29, 2016), <http://www.thestar.com.my/news/nation/2016/07/29/dzulkifli-ahmad-is-new-macc-chief/>.

59. Loshana K Shagarandm & M. Mageswari, *Mohamed Apandi Ali Replaces Gani Patail as Attorney-General*, THE STAR (July 28, 2015), <http://www.thestar.com.my/news/nation/2015/07/28/gani-patail-terminated/>.

60. Satyajit Gupta authored the section on Myanmar.

61. Radio Free Asia, 2015 MYANMAR GENERAL ELECTIONS, <http://www.rfa.org/english/news/special/burelection/home.html> (last visited Apr. 21, 2017).

62. Nwe Oo & Dino Santaniello, *Myanmar's Condominium Law of 2016: A Foundation for Foreign Investment in Guide to Doing Business in Thailand 5* (LEX MUNDI 2016).

63. See *id.*

64. Financial Institutions Law (Act No. 20/2016) (Malay.).

Myanmar's parliament enacted the Arbitration Law,⁶⁵ replacing the previous arbitration legislation that was more than seventy years old.⁶⁶ This enactment "has given effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Myanmar acceded [in] April 2013."⁶⁷ The law is based on the UNCITRAL Model Law on International Commercial Arbitration 1985.

"Myanmar's political leader Daw Aung San Suu Kyi issued guidelines for acceptance of gifts to Myanmar's civil servants as part of the government's drive to eradicate bribery and corruption in Myanmar."⁶⁸

"On July 7, 2016, Myanmar's Ministry of Commerce issued a [n]otification to remove trade restrictions on []foreign joint venture companies trading in construction material[]."⁶⁹

On February 14, 2016, the Ministry of Environment Conservation and Forestry issued the Environmental Assessment Procedure. The procedure provides a new set of rules introduced for evaluating the environmental impact of local projects.

The mining sector in Myanmar has been very restricted for foreign investors. With the amendment of the existing mining laws, "the biggest change has been to introduce the possibility of the Myanmar government taking equity in the project instead of a [thirty percent] entitlement under the product sharing contract."⁷⁰

The Myanmar Investment Commission (MIC) updated the list of restricted business activities by adding activities that can damage watershed forests, religious sites, traditional worship sites, farm and grazing lands, and water resources. This list primarily focuses on protecting the environment.

B. OTHER DEVELOPMENTS

President Obama lifted U.S. economic sanctions on Myanmar to show support for the country's political reforms and economic growth and to facilitate trade between the two countries. The move eased restrictions on Myanmar's financial institutions, allowed certain transactions related to U.S.

65. Arbitration Law (Act No. 5/2016) (Malay).

66. Roger Milburn, *Myanmar Gives Effect to New York Convention by Enacting Arbitration Law*, BERWIN, LEIGHTON, PAISNER LAW: EXPERT LEGAL INSIGHTS (Jan. 19, 2016), <http://www.blplaw.com/expert-legal-insights/articles/myanmar-gives-effect-new-york-convention-enacting-arbitration-law>.

67. *Id.*

68. Chris Hughes et al., *Myanmar Issues Guidelines to Combat "Rampant and Obvious" Bribery*, LEXOLOGY (Apr. 20, 2016), <http://www.lexology.com/library/detail.aspx?g=9a78b6ae-0c14-473c-a215-c6b0bfda87df>.

69. Yuwadee Thean-ngarm et al., *Myanmar: Trade Restrictions Removed for Traders of Construction Materials*, TILLEKE & GIBBINS (July 20, 2016), <http://www.tilleke.com/resources/myanmar-trade-restrictions-removed-traders-construction-materials>.

70. Marius Toime & Chris Hughes, *Myanmar Mining - An Update on Recent Developments*, LEXOLOGY (Feb. 8, 2016), <http://www.lexology.com/library/detail.aspx?g=e2591765-5f8e-49d7-a552-5d157bebebac>.

individuals living in the country, and removed seven state-owned enterprises and three state-owned banks from the United States' blacklist.

On March 4, 2016, the Myanmar Foreign Banking Licensing Committee granted preliminary banking licenses for operation in Myanmar to the Bank for Investment and Development of Vietnam, State Bank of India, Taiwan's Sun Commercial Bank, and South Korea's Shinhan Bank.

The Central Bank of Myanmar released regulations for mobile financial service providers, opening up the sector to non-banking financial institutions. "The new regulations are intended to promote access to banking services, particularly in rural areas where the population often has limited access to traditional banking."⁷¹

On June 7, 2016, the Myanmar Investment Commission (MIC), a government body under the Ministry of Planning and Finance that appraises domestic investment proposals in Myanmar, was reconstituted, including the appointment of eleven new members.

The President announced the appointment of a new economic steering committee on June 16, 2016. Led by the National Planning and Finance Ministers, the committee consists of parliamentarians, financial experts, and ministers. The committee aims to review the country's trade, monetary, and fiscal investment policies.

"A new foreign exchange committee [was] established for the purposes of developing the interbank market in Myanmar. The committee comprises representatives from three state banks, nine international lenders, and [nineteen] local commercial banks, and will bring state, domestic, and international banks together for the first time."⁷²

The Myanmar Companies Act is under review by Directorate of Investment and Company Administration (DICA) with assistance from the Asian Development Bank. It is anticipated the latest draft will be presented to parliament for consideration in the coming sessions. One of the key developments includes a potential amendment to the definition of "foreign company," a company owned more than the prescribed percentage by an overseas corporation or other foreign person. The exact level of the prescribed percentage has not yet been disclosed, but this opens the door for joint ventures between Myanmar and foreign investors to benefit from classification as a Myanmar company in relation to permitted activities, licenses, permits, and land rights. While it is not known at this time what the final form of the amended Myanmar Companies Act will be, it is anticipated that many of the changes could lead to greater transparency and certainty for company administration for investors.

71. Chris Hughes et al., *Myanmar Postcard - April 2016*, LEXOLOGY (Apr. 29, 2016), <http://www.lexology.com/library/detail.aspx?g=24b8ad37-5cf5-4353-b9e7-67cde723d3c8>.

72. Chris Hughes et al., *BLP's Myanmar Postcard - May 2016*, LEXOLOGY (May 27, 2016), <http://www.lexology.com/library/detail.aspx?g=7a47774f-332e-45d4-9d45-94309db54bd5>.

V. Timor-Leste⁷³

A. BANKING

On December 24, 2015, the Central Bank of Timor-Leste (*Banco Central de Timor-Leste*) amended the rules on deposit and withdrawal of United States dollars by banking institutions operating in the country,⁷⁴ as well as the rules on clearing and settlement of checks,⁷⁵ by means of Instructions 2/2015 and 3/2015, respectively.

B. CORPORATE/BUSINESS

“Considering the need to adopt economic diversification measures aimed at [] reducing dependence on revenues from mineral resources, the Government [] created the National Commission for Trade Facilitation” (Resolution 6/2016 of February 17, 2016),⁷⁶ which is a forum to promote dialogue between all stakeholders involved (e.g., the Government and the private sector) in trade facilitation matters, “with a view to making recommendations to the Government, as well as coordinating all governmental work on this [] matter.”⁷⁷

The Government also created the Control and Supervisory Authority for Economic Activities, Health and Food⁷⁸ (Decree-Law 26/2016 of June 29, 2016), which shall be responsible for controlling and monitoring the enforcement of regulations applicable to food trade and health requirements applicable to certain premises.⁷⁹

In July 2016, the Parliament approved the Consumer Protection Law (Law 8/2016 of July 8, 2016), which covers matters such as rights and duties in consumer transactions, contractual and legal protection, and credit.⁸⁰ The new regime imposes duties on producers, importers, retailers, and vendors, prohibits abusive practices and contractual clauses, and sets forth penalties for breach of its rules.⁸¹

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74. *Timor-Leste Legal News - December 2015 through February 2016*, MIRANDA LAW FIRM, <http://www.mirandalawfirm.com/en/insights-knowledge/publications/legal-news/timor-leste-legal-news-december-2015-through-february-2016> (last visited Apr. 21, 2017).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Timor-Leste Legal News - June through August 2016*, MIRANDA LAW FIRM, <http://www.mirandalawfirm.com/en/insights-knowledge/publications/legal-news/timor-leste-legal-news-june-through-august-2016> (last visited Apr. 21, 2017).

79. *Id.*

80. *Id.*

81. *Id.*

C. ENERGY & NATURAL RESOURCES

In the mining sector, in line with the need to promote the diversification of the non-oil sector and taking into consideration the vision of the 2011–2030 Strategic Development Plan, the Government approved the special interest of the Investment Project for a limestone extraction unit and cement production plant in Baucau (Resolution 43/2015 of November 25, 2015).⁸² Moreover, the Government granted the National Petroleum Authority the powers to also act as regulatory authority for the mining sector, which shall hereafter be designated as the “National Petroleum and Mining Authority” (*Autoridade Nacional do Petróleo e Minerais*, ANPM) (Decree-Law 1/2016, of December 28, 2016).⁸³

In the electricity sector, the Government approved the Regulations on Electric Energy Licensing and Tariffs (Decree-Law 33/2016 of August 17, 2016).⁸⁴ The Regulations set forth rules on “electricity tariffs and prices, as well as the terms applicable to access to the electricity supply and distribution public network, including control and supervision conditions and applicable penalties.”⁸⁵

The downstream sector also was subject to major developments, with the enactment of ANPM Regulation 1/2016 of March 2, 2016, and ANPM Directive 1/2016 of April 6, 2016, which approved the Regulations on Installation and Operation of Storage Facilities and the rules on Storage and Retail Sale of Kerosene, respectively. Regulation 1/2016 covers, amongst other things, the terms and conditions applicable to the design, construction, installation, modification, maintenance, operation, and decommissioning of storage facilities for fuels and other products, as well as the applicable licensing fees and penalties.⁸⁶ Directive 1/2016 covers kerosene storage and retail sale activities, and contains rules on storage infrastructures, atypical storage infrastructures, retail sale, manpower, temporary authorizations, inspections, and penalties.⁸⁷

Additionally, during 2016, the Offshore Petroleum Operations Regulations were approved (Decree-Law 32/2016 of August 17, 2016), addressing matters concerning offshore petroleum activities in the Timor-Leste Exclusive Area, such as prospecting authorizations, exploration, development, and production operations, and applicable requirements on

82. *Timor-Leste Legal News - September through November 2015*, MIRANDA LAW FIRM, <http://www.mirandalawfirm.com/en/insights-knowledge/publications/legal-news/timor-leste-legal-news-september-through-november-2015> (last visited Apr. 21, 2017).

83. *Timor-Leste Legal News - December 2015 through February 2016*, *supra* note 74.

84. *Timor-Leste Legal News - June through August 2016*, *supra* note 78.

85. *Id.*

86. *Timor-Leste Legal News - March through May 2016*, MIRANDA LAW FIRM, <http://www.mirandalawfirm.com/en/insights-knowledge/publications/legal-news/timor-leste-legal-news-march-through-may-2016> (last visited Apr. 21, 2017).

87. *Id.*

facilities design and operation, health, safety, and environment, as well as local content and procurement of goods and services.⁸⁸

D. ENVIRONMENT

Legislative developments in the environmental sector included the approval of the regulations on the inspection and calibration of gasoline and diesel pumps (Ministerial Diploma 21/2016 of March 9, 2016)⁸⁹ and the legal framework applicable to the creation and management of the National System of Protected Areas (Decree-Law 5/2016, of March 16, 2016).⁹⁰

E. FORESTRY

Recognizing the importance of sandalwood to the Timor-Leste people and economy, the Government classified sandalwood as an iconic plant of national value (Resolution 41/2015 of November 18, 2015).⁹¹ The statute sets forth, amongst other things, that (1) due to its scarcity, sandalwood must have special protection by the public institutions, as well as by natural and legal persons; (2) cutting, extraction, and sale of sandalwood is prohibited; and (3) activities relating to sandalwood inventory, research, and plantation shall be intensified.⁹²

F. GAMBLING

The gambling sector also saw major developments during 2016. By means of Decree-Law 6/2016 of April 20, 2016, the Government approved the legal framework applicable to the licensing, operation, and control of activities regarding social and entertainment gambling (*e.g.*, bingo, lotteries, contests, on-line games), slot machines, and traditional games (*e.g.*, cock fighting).⁹³ Under this statute, except for cock fighting and *Kuro*,⁹⁴ concession for gambling activities is subject to a public tender process, with the Ministry of Tourism being responsible for supervising the sector and issuing the mandatory authorizations.

G. HEALTH

By means of Decree-Law 14/2016 of June 8, 2016, the Government approved rules aimed at controlling and preventing the consumption of tobacco products in the country.⁹⁵ The statute sets forth strict requirements on tobacco trading and addresses, *inter alia*, labeling and packaging

88. *Timor-Leste Legal News - June through August 2016*, *supra* note 78.

89. *Timor-Leste Legal News - March through May 2016*, *supra* note 86.

90. *Id.*

91. *Timor-Leste Legal News - September through November 2015*, *supra* note 82.

92. *Id.*

93. *Timor-Leste Legal News - March through May 2016*, *supra* note 86.

94. *Kuro* is a traditional dice game.

95. *Timor-Leste Legal News - June through August 2016*, *supra* note 78.

requirements, tobacco composition, and limitations on promotion and marketing of tobacco products. The new rules also determine certain consumption restrictions (e.g., prohibiting smoking in specific areas) and foresee consumption prevention measures, the involvement of public authorities in the control of tobacco products, and the applicable penalties.

H. INFRASTRUCTURE

On the infrastructure front, the Government approved Decree-Law 43/2015 of December 28, 2015, which sets forth the legal framework applicable to the Tibar Port Public-Private Partnership; thereby, granting the Government powers to execute the contract for the design, construction, financing, implementation, operation, and management of the country's new deep-water port.⁹⁶ The framework includes, *inter alia*, rules on tariffs, land rights, and dispute resolution mechanisms. Additionally, the Infrastructure Fund's legal framework was amended to guarantee the same response to the financial needs without overloading the State Budget (Decree-Law 13/2016 of May 18, 2016).⁹⁷

I. MARITIME BOUNDARIES

Decree-Law 4/2016 of March 16, 2016 created the Council for the Definitive Delimitation of the Maritime Boundaries between Timor-Leste and the Commonwealth of Australia and the Republic of Indonesia (*Conselho para a Delimitação Definitiva das Fronteiras Marítimas*, "CDDFM").⁹⁸ Chaired by the Prime-Minister, the CDDFM is responsible for, *inter alia*, (1) defining the conditions and goals of the negotiation for a treaty for the definitive delimitation of maritime borders between these countries, and (2) monitoring the negotiation procedure.⁹⁹ On September 26, 2016,¹⁰⁰ the Conciliation Commission confirmed that it is competent to continue with the conciliation process to resolve the disputed maritime boundary between Australia and Timor-Leste.¹⁰¹

J. PRIVATE INVESTMENT

Through Decree-Law 45/2015 of December 30, 2015, the Government created the Agency for the Promotion of Investment and Exports of Timor-Leste (TradInvest Timor-Leste), which is a public institute entrusted with

96. *Timor-Leste Legal News - December 2015 through February 2016*, *supra* note 74.

97. *Timor-Leste Legal News - March through May 2016*, *supra* note 86.

98. *Id.*

99. *Id.*

100. Press Release, Permanent Court of Arbitration, Conciliation Between the Democratic Republic of Timor-Leste and the Commonwealth of Australia (Sep. 26, 2016), <https://pca-cpa.org/wp-content/uploads/sites/175/2016/09/Press-Release-No.-4-EN.pdf>.

101. MARITIME BOUNDARY OFFICE, <http://www.gfm.tl/>.

promoting and monitoring private investment, reinvestment, and exports from the country.¹⁰²

K. STATE ADMINISTRATION

The Government approved the organizational structures of the Ministry of Finance (Decree-Law 38/2015 of October 7, 2015),¹⁰³ the Ministry of Commerce, Industry and Environment (Decree-Law 39/2015 of November 4, 2015),¹⁰⁴ the Institute for Business Development Support (Ministerial Diploma 26/2015 of November 25, 2015),¹⁰⁵ and the Ministry of Petroleum and Mineral Resources (Decree-Law 16/2016 of June 22, 2016).¹⁰⁶

The Government also approved the rules applicable to the execution, monitoring, and report of the General State Budget (Government Decree 1/2016 of February 1, 2016),¹⁰⁷ and the National Parliament approved the *Sucos*' Law, which sets forth the powers and authority of the *Sucos*¹⁰⁸ and their respective association bodies, as well as the rules on the appointment of the respective members (Law 9/2016 of July 8, 2016).¹⁰⁹

L. TOURISM

The tourism sector was also subject to developments during 2016, notably through the approval, by means of Decree-Laws 17/2016 and 19/2016 of June 22, 2016, of the rules on the licensing, installation, classification, and operation of Camping Sites¹¹⁰ and for the licensing and operation of travel and tourism agencies.¹¹¹

102. *Timor-Leste Legal News - December 2015 through February 2016, supra* note 74.

103. *Timor-Leste Legal News - September through November 2015, supra* note 82.

104. *Id.*

105. *Id.*

106. *Timor-Leste Legal News - June through August 2016, supra* note 78.

107. *Timor-Leste Legal News - December 2015 through February 2016, supra* note 74.

108. *I.e.*, public entities, with an associative nature, created due to historical, cultural, or traditional circumstances, whose members are bound by family or traditional ties in a given area.

109. *Timor-Leste Legal News - June through August 2016, supra* note 78.

110. *Id.*

111. *Id.*