



## ANTI-MONEY LAUNDERING

### The new ministerial regulation dividing powers and duties within the Anti-Money Laundering Office

The Ministerial Regulation dividing Anti-Money Laundering Office's governmental sectors (No. 2) B.E.2567 (A.D. 2024) was issued under the National Government Organizations Act B.E.2534.

This Ministerial Regulation mainly amends the powers and duties of Anti-Corruption Operation Center in the Anti-Money Laundering Office ("Office") as follows:

1. Present to the Secretary-General measures regarding the anti-corruption operation and misconduct of the Office, assess risks and create measures to mitigate and prevent risks of corruption and misconduct, develop the operation plan against corruption and misconduct and promote moral standards within the Office in compliance with national strategies and government policies and present the operation plan to the Secretary-General of the Office.
2. Supervise the operation under the operation plan against corruption and misconduct and the promotion of moral standards of the governmental sector within the Office.
3. Operate within the relevant legal framework concerning moral standards and moral conduct for civil servants, receive complaints regarding corruption, misconduct of duties, as well as violation of ethical standards by officers in the

Office and forward those complaints to relevant sectors, including coordinating and following up a case until the case is resolved.

4. Follow up, evaluate, and create a report regarding anti-corruption and misconduct and the promotion of moral standards within the Office to present to the Secretary-General and relevant sectors.
5. Support or collaborate with operations of relevant sectors or those assigned by the Secretary-General.

## BANK OF THAILAND

### Bank of Thailand (the "BOT") 's Public Hearing on Amendment to Lending Measures

The Bank of Thailand ("BOT") proposed for the amendment to its lending measures in accordance with Regulatory Impact Assessment ("RIA").

In this regard, there are two main aspects of amendments as provided below:

The first aspect of the amendment is to make the financial institution perform transactions similar to lending money more efficient and better manage risks, while complying with the governance of the BOT. There are many details of the first aspect worth noting including the proposed amendment to improve the scope which an insurer can be used to commute the Single Lending Limit to cover trade credit insurer instead of limiting to just export credit insurer as previously. Moreover, the amendment aims to allow a commercial bank to buy debts from

foreign commercial banks in addition to domestic entities. Additionally, the amendment aims to include factoring transaction and guarantee transaction as an underlying asset for conducting risk participation business and allows the commercial bank to conduct risk participation business with a foreign insurance company whose credit rating is at the investment grade.

The second aspect of the amendment is to lessen cost of operation for the financial institution that performs a related lending transaction. In summary, the proposed amendment grants an exception to ratification requirement in case that the amendment to the condition is to decrease or revoke the original credit limit. Moreover, the proposed amendment will allow the financial institution to continue perform in accordance with the agreement after the other party has become the major shareholder or a business with related interest.

## **HAZARDOUS SUBSTANCES**

### **Hazardous Chemical Substances**

There is news about the illegal activities concerning cadmium where over 10 thousand tons of cadmium waste were found in several warehouses located in Bangkok, Samut Sakhon, and Chonburi. The cadmium waste was transported from the storage site owned by Bound and Beyond Public Company Limited in Tak province. Bound and Beyond Public Company Limited was formerly known as Padaeng Industry Public Company Limited which operated a zinc-mining business before switching to the hotel business. Bound and Beyond Public Company Limited was seen to be at fault for improperly disposing of toxic waste by selling the tailings to J & B Metal Co., Ltd. under a contract that required the latter to dispose of them. The government official, therefore, ordered the closure of areas where those

chemical wastes were found to prevent negative impact to nearby residents and ordered the company responsible for mishandling cadmium waste to conduct the transportation of cadmium wastes from warehouses to be properly buried at a permanent dump site in Tak. The transportation was strictly overseen by the Ministry of Industry.

Another incident worth mentioning about chemical substances is the explosion of a large pyrolysis gasoline (pygas) tank at a chemical storage site at the Map Ta Phut Industrial Port on Thursday 9 May 2024. The Industrial Estate Authority of Thailand (IEAT) declared a Level 2 Emergency in the area and ordered the immediate evacuation of everyone from the port and the Map Ta Phut Industrial Estate as the fire was spreading. Level 2 Emergency refers to an uncontrollable emergency that causes damage to people, property, operations, or the environment and requires evacuation. The fire sent huge plumes of acrid black smoke into the air before eventually being brought under control at 4.50 pm. There were at least 1 casualty and 4 injured people being sent to the hospital. The incident not only affects the industrial sector, but also the tourism sector; many fruit farms in Rayong reported tour cancellations after the explosion. The IEAT was instructed to closely monitor all factories in an industrial estate and strictly comply with the Factory Act. The government and relevant authorities need to strengthen the safety measures to prevent future incidents.

Factories must comply with the Factory Act, B.E.2535, in accordance with the type set out in the Act and its subordinate regulations.

The activity of the hazardous chemical substance is regulated under the Hazardous Substance Act, b.e.2535. The Hazardous Substance Act also empowers the Ministry of Industry to issue a notification prescribing the list of hazardous chemical substances and the responsible authority.

The operation of factories and activities, such as possession, importation, and exportation of the chemical substance, must be done in accordance with regulations prescribed by the relevant authorities to ensure that the chemical substances are properly treated, and the public safety standards are met.

## **LABOR LAW**

### **White Collar and Thai Labor Law**

White-collar crime refers to non-violent criminal acts typically committed by individuals in business. These crimes often involve deceit, fraud, or financial manipulation for personal gain. In Thailand, labor law permits employers to suspend employees suspected of fraud while investigations are conducted, provided that the company's work policies and employment terms authorize such actions.

Without the company's work policies, the employers are required to provide severance pay up to 400 days' wages and issue appropriate notice of termination between 30 and 90 days to employees dismissed on suspicion of fraud. To be exempted from payment of a several pay, the employers are required to demonstrate that the employees' conduct falls into an exception of the following legal requirements:

1. Dishonest performance of duty;
2. Willfully causing damage or negligent causing serious damage;
3. Violation of the company's work rules and regulations;
4. Falling to faithfully discharge the employee's duty; and
5. Being sentenced to imprisonment by a final court judgement.

## **REAL ESRATE**

### **Reduction of registration fee for real estate transfers and real estate mortgages**

In April 2024, the Ministry of Interior issued the two new Ministerial Regulations on reduction of fees for transfer and mortgage of real estate. The First Ministerial Regulation, which is called the Ministerial Regulation on prescribing the registration fee for rights and juristic acts for transfer and mortgage of condominium units B.E. 2567 (A.D. 2024) issued on 9 April 2024. This regulation prescribes the reduction on registration fees on the transfers of ownership and mortgages of condominium units. The registration fees are reduced to 0.01 percent provided that the purchased price or the appraisal price does not exceed 7 million Baht and the mortgage amount does not exceed 7 million Baht.

Another Ministerial Regulation is the Ministerial Regulation on prescribing the registration fee for rights and juristic acts under the Land Code for commercial and residential buildings B.E. 2567 (A.D. 2024). According to this Ministerial Regulation, it reduces the registration fees for transfer of commercial and residential buildings to 0.01 percent of the purchased price and the mortgage amount provided that the appraisal price or the mortgage amount does not exceed 7 million Baht. Also, an important condition is that a purchaser of a building under this Ministerial Regulation must be a Thai nationality.

These two new Ministerial Regulations are effective from the date of issuances until 31 December 2024.

### **Tax Exemption to Boost Residential Real Estate in Force**

In an effort to boost real estate sector and address housing issue, the government issued a regulation on tax exemption for individuals who

use their income to pay for the contractor to build a residence.

Accordingly, a tax exemption, which the taxpayer will receive in the year that the contraction is finished, is THB 10,000 per THB 1,000,000 that is used to pay the contractor, but not more than THB 100,000.

Nevertheless, there are many conditions. For example, this provided tax exemption is limited to only one residence, the contractor must also be a VAT registrant, and the stamp duty must be paid through electronic system in which tax invoice is provided.

This tax exemption is provided for the payment for a construction contract from 9 April 2024 to 31 December 2025, where the construction is also on the progress.

## SECURITY

### SEC Office's Public hearing on the amendment to relax bondholder's representative rules for funding portal

To adjust qualifications of bondholders representative to be suitable with the current situation, the Securities and Exchange Commission Office ("SEC Office") opened a public hearing on the SEC Office's proposed amendment regarding qualifications of the bondholder's representative from 22 March 2024 to 25 April 2024.

This proposed amendment touched on the main two areas of the SEC Office's concerns.

Firstly, instead of allowing every kind of a securities company that is not authorised to operate a mutual fund management business or a private fund management business to be a bondholders' representative, the amendment will allow for only specific types of securities companies to be the bondholders' representative, such as securities broker, securities dealer or

securities underwriter, given the reason that natures of these businesses are more compatible with those of bondholders' representative, and thus they are more capable in performing this duty.

Secondly, the amendment will allow the funding portal to be the bondholders representative for the bonds that it acts as an intermediary. This is to boost secured bond issuance that provides more protection to investors, given that, under the current rules, existing bondholder's representatives are all busy dealing with their bonds' default while funding portals are not allowed to be the bondholders' representative.

Nevertheless, to protect the investors, the amendment will impose extra financial qualifications of all bondholders' representative to make sure that their financial status is sufficient to perform their duty throughout their service term, such as minimum paid capital of THB 25,000,000.

### SEC strengthens digital token offering governance

To enhance transparent governance on digital token offering and build confidence to the investors, the Securities and Exchange Commission of Thailand ("SEC") issued a new SEC Notification No. GorJor. 7/2567 regarding Digital Token Offering to the Public (No. 10) (the "SEC Notification No.7/2567"), which became into force on 16 April 2024.

The material amendments to the digital token governance can be summarized as below:

#### **1. New Requirements on Check & Balance Mechanism and Conflict-of-Interest Handling**

The digital token issuer shall implement (i) the Check & Balance mechanism; at least; consisting of appointing an independent auditor and having annual audit; (ii) preventive measures and

management for conflict of interests; including (iii) disclosure of the said mechanism and measures in the filing documents for digital token offering to the SEC Office.

Moreover, it is noteworthy that the SEC Notification No.7/2567 requires the issuance and offering of digital tokens to be approved by the board of directors before the date of filing an application for digital tokens offering in order to ensure that the board of directors take accountability for their approval decisions.

## **2. Amendment to the rules with regard to resolutions of digital token holders and arrangements of the digital token holder meetings**

The amended rules cover methods and rationale of resolution requests, resolutions of digital token holders, and the procedures for arrangement of the meetings of digital token holders. Mainly, the procedures for arranging the meetings of digital token holders or sending a notice requesting for a resolution of digital token holders shall follow the same rules as specified in the SEC Notification No. SorRor. 26/2555 regarding the requirements concerning the items and contents in the trust deed of the real estate investment trust dated 21 November B.E.2555, mutatis mutandis. In any case, the resolution of the digital token holders shall be passed by a majority vote unless it is specified in a registration statement otherwise requiring more than the majority vote.

## **3. Additional requirements for advertisement of digital token offering**

It is amended by the SEC Notification No.7/2567 that if the issuer advertises the digital tokens by any means other than distribution of prospectus after the effective date of registration statement and prospectus, the issuer shall carry out the advertisement with appropriateness in term of content, content proportion, and presentation methods in order to ensure that the investors receive necessary information, which is

beneficial for their decision making. Importantly, the advertised content must be in Thai language and in compliance with the requirements set forth in clause 4 of SEC Notification No.7/2567.

In the event that the issuer fails to comply with the aforementioned requirements, the SEC has authorities to order the issuer to suspend and/or modify a sale promotion or advertisement, explain to the investors, and/or act or refrain from doing any action within specified period so that the investors can consider and decide based on complete, accurate, correct, and non-deceptive information.

## **Public hearing on maintenance of capital of the securities and derivatives business that also operate digital assets business (“SDOD”)**

The Office of Securities and Exchange Commission (“SEC Office”) opened public hearing on the Drafts of Notifications Related to the Maintenance of Capital of the SDOD (“Drafts”) from 10 May 2024 to 27 May 2024. The SEC Office aims for the Drafts to improve trust in capital market and digital assets market by imposing an increase in the investor protection, particularly in terms of capital requirement that could be used to protect or compensate the investor.

As a result of the Drafts, the SDOD must maintain capital, in addition of the higher of the fixed minimum capital or variable minimum capital, equal to the value of digital assets in hot wallet for a portion exceeding adjusted NC value. The Drafts would also allow the SDOD to use insurance policy against the custody risk or trading service risk to in lieu of their respective reserve requirement.

In light of the release of the Drafts, the SEC Office also stated that it had taken many concerns from the public, such as that the SEC Office should seek for an alternative in protecting the

investor other than imposing high net capital ratio requirement, into account and adjusted the Drafts accordingly.

## TAXATION

### Latest updates on Thailand's Top-up Tax Bill in Response to Implementation of Pillar II

For the past years, Pillar 2 as the initiative of the Base Erosion and Profit Shifting or BEPS project by the Organization for Economic Cooperation and Development (the 'OECD') has been widely contemplated in more than 140 member countries, including Thailand. In Marh 2024, the Revenue Department of Thailand (the 'RD') proposed a draft of new legislation in response to implementation of Pillar II of the BEPS, known as the '**Top-up Tax Bill**', for public hearing.

As for a brief background of the BEPS action plans, these plans are principally aimed to minimize gaps in the international tax regulations that allow multinational entities (MNEs) to shift profits to low-tax jurisdictions. The OECD prepared two main parts. Specifically, the first part is called as 'Pillar I', focusing on re-allocation of profits and tax rights on large MNEs' profits, and the second part is 'Pillar II', initiating the global minimum tax of not less than 15% on the MNEs' profits, which must be calculated at the Effective Tax Rate (ETR).

The objective of the Top-up Tax Bill is basically to regulate collection of the top-up tax. This top-up tax under the Bill is considered as a type of assessment tax excluded from income tax in accordance with the Global Anti-Base Erosion or the GloBE Rules. At least 50% but not exceeding 70% of such revenues will be allocated to the National Competitiveness Enhancement Fund for the targeted industries managed by the Board of Investment of Thailand (the 'BOI')

In term of the applicable scope of the Bill, a constituent entity as a member of an MNE Group

having the aggregate turnover of its ultimate parent entity, in Thai Baht that is equivalent to Euro 750,000,000, shall be subject to the Bill. However, government entitles, international organizations, non-profit organizations, pension funds, ultimate parent entity who is a real estate investment instrument, and other juristic persons specified in a Royal Decree are excluded.

In addition to the above, comprehensive criteria and rules for determining low-tax jurisdictions, the jurisdictional top-up tax, and the top-up tax payable amount, are covered in the Bill for clarity in enforcement.

With regard to the obligations imposed to the constituent entities in scope, these shall be obliged to submit the following documents:

- i. an information report declaring information of the constituent entities, the MNE Group, and the country where the constituent entities are located;
- ii. GloBE Information Return; and
- iii. Top-up Tax Return together with the top-up tax payments for the corresponding tax amount.

The afore-listed documents must be submitted to the RD within 15 months since the last date of the accounting period as imposed by each entity in which the top-up tax is considered.

Last but not least, for any constituent entities who fail to comply with the Bill, they will be subject to penalties, on a case-by-case basis, as follows:

- Any taxpayer, who fails to pat the top-up tax within the specified period, shall be subject to a fine equivalent to 1 time of the top-up tax amount.
- Any taxpayer, who fails to submit the GloBE information Return and the Top-up Tax Return within specified period, shall be subject to a fine equivalent to 2 times of the top-up tax amount.

- In addition, if the taxpayer fails to pay the top-up tax or partly pay the top-up tax, such taxpayer will be subject to the extra charge of 1.5 percent per month.
- On top of the abovementioned penalties, criminal penalties could also be imposed on any taxpayer who fails to comply with its provisions and causes damage to the financial stability of Thailand, or commits any relevant criminal offences like making a fake statement or evidence.

### **Inheritance tax in Thailand**

The Inheritance Tax Act B.E. 2558 (A.D. 2015) (“Act”) imposes liability on both the natural person and juristic person who have received an inheritance, regardless of nationality, to pay inheritance tax. The Act prescribes certain types of assets which are subjected to inheritance tax such as (a) immovable properties; (b) securities under the law on securities and exchange; (c) deposits or any other money that the testators have the right to withdrawn or claim from financial institutions or persons; (d) vehicles with registration; and (e) other financial assets as prescribed by the Royal Decrees. The value of inheritance is calculated by the aggregate value of inheritance offset by the inherited liabilities of the taxable person.

According to this Act, taxable person is subjected to the inheritance tax only on the value of the inheritance received from each testator all at once or over a period of time exceeding THB 100 million. The inheritance tax rate under this Act is 10 percent, except the case of heirs who are ascendants or descendants of the testator, where the inheritance tax rate is 5 percent. The taxable person shall file a tax return and pay tax by using the form as prescribed by the Director-General within 150 days from the day receiving an inheritance valued exceeding THB 100 million.

## **VISA**

### **Extension of Free-Visa Period for Tourists from India and Taiwan**

The Ministry of Foreign Affairs has announced that it extended the free visa period for tourists coming from India and Taiwan. According to the Cabinet’s resolution in October 2023, it has already approved the 30-day free visa schemes to the visitors from these two countries for the purpose of tourism, previously starting from 10 November 2023 to 10 May 2024. The policy is extended to 11 November 2024 since the Minister believed that the Indian and Taiwanese tourists would stipulate the domestic economic growth, especially in the tourism industry.

Should you have any question, please do not hesitate to contact us via [info@bgloballaw.com](mailto:info@bgloballaw.com)

