



MERGER & ACQUISITION

Business merger of True and DTAC

An ongoing controversial issue arises in regard to the proposed business merger between the two giant telecommunication companies, True Corporation Public Company Limited (“TRUE”) and Total Access Communication Public Company Limited (“DTAC”). This deal can potentially be foreseen whether this merger can be approved by the relevant authorities, it may greatly have impacts on the telecommunication market including: unfair competition, limitation of the choices for the consumers, and infringement of data privacy.

It is argued that the TRUE and DTAC merger is that by notifying this deal to the National Broadcasting and Telecommunications Commission (“NBTC”), the NBTC has classified this deal as a red flag. However, at the moment, the question arises of whether the NBTC neither has power to consider nor reject such business merger of TRUE and DTAC, or the only power the NBTC have is to impose the specific measures regarding market dominance in order to prevent public interest from damage.

On 17 August 2022, the NBTC came up with the first plan with the help of Office of the Council of State, to proceed with the TRUE and DTAC deal. According to Section 6 of the Act on Organization to Assign Frequency Waves and Regulate the Radio Broadcasting Business Television and Telecommunications (No.4) Act B.E. 2564 (A.D. 2021), the NBTC a power to appoint seven commissioners to consider whether or not the NBTC shall be eligible to render the resolution on the proposed business merger between TRUE and DTAC. Unfortunately, there are only five qualified commissioners where, three of them were of the

view that the NBTC has the power to approve or block the deal but other two said that this is out of scope of the NBTC’s power.

Compared to the business merger case between Advanced Info Service Public Company Limited (“AIS”) and Triple T Internet Public Company Limited (“TTTBB”) couple years ago, where AIS acquired TTTBB’s business, Clause 4 of Notification of the National Telecommunications Commission regarding measures for prevention of monopoly or unfair competition in telecommunications business B.E. 2549 (A.D. 2006) (the “Old Notification”), provided that this type of transaction required permission by NBTC. However, the Old Notification was no longer applied.

DIGITAL

The decline of Cryptocurrency

From the start of 2022, the trading value of the cryptocurrency market has been dropped significantly and continuously, from 180 to 54 billion baht, while the cryptocurrency trading accounts in Thailand have also been dramatically decreased, from 707,000 to 230,000 accounts due to its value fluctuation.

This event occurred due to poor market sentiments including: macroeconomic policies, the increase of interest rate, quantitative tightening and economic slowdown, and the key drivers to the falling of the price of cryptocurrency are the Russia-Ukraine war, inflation and lock-downs in China. These mentioned causes have put hard pressure on the cryptocurrency market which then turned into the “bear market”.

In addition, Zipmex, one of the Thailand's leading digital asset exchange platforms, has faced the major problem related to its system, the prohibition of withdrawal of investors' assets from Zwallet, for around 60,000 to 70,000 accounts. It can be said that Zipmex fiasco shall be considered as another factor that forced the cryptocurrency market to decline. This incident affects investment in other cryptocurrency business operators such as Binance and Bitkub as well. However, it was viewed that this Zipmex incident is only a short-term market sentiment. It is forecasted that the bear market may take approximately one and a half years to recover.

CANNABIS

The new bill on Cannabis

On 20 August 2022, the bill on Cannabis (the "Bill") has been released, with the purpose of limiting the certain activities in relation to cannabis. There are several key features under this Bill as follows:

For household consumption

- Any individual shall be allowed to grow cannabis no more than 15 plants per household, for household use, and such individual shall register with the Food and Drug Administration of Thailand.
- Any individual shall be allowed to grow no more than 5 rai of cannabis plants for the household consumption.

For commercial use

- Anyone who grows, imports, exports, infuses, transforms or sells cannabis must obtain permission.
- No one shall be allowed to advertise for the sale of cannabis unless permission has been granted.
- A licensee shall not be allowed to sell cannabis for the consumption to anyone aged below 20,

pregnant women, or women who breastfeed babies.

- The sale of cannabis shall also be prohibited in temples, religious premises, schools and educational institutions, and other places as specified by the Public Health Minister.

Otherwise, the penalties shall be imposed.

In addition, the Bill also prohibits cannabis smoking in certain areas including: temples, public parks, and restaurants.

Furthermore, on 25 August 2022, the Ministry of Health has announced a new regulation for manufacturers that the cannabis is allowed to be utilized as ingredient which is contained in instant foods in the following:

- Display a context or symbol indicating that the restaurant uses cannabis as food ingredient;
- Display cannabis as food ingredient in menu; and
- Provide food safety recommendation regarding cannabis consumption to consumers.

Moreover, the Health Department has stipulated 30 minutes training course for either for business operators or food handlers how to utilize cannabis for cooking food that is suitable and safe for consumers.

PDPA

Four new sub-regulations of the Personal Data Protection Act of Thailand

On 21 July 2022, Thailand represented by the Personal Data Protection Commission ("PDPC"), released the four new sub-regulations of the Personal Data Protection Act B.E.2562 (2019) ("PDPA") which are enforceable in order to establish certain measures in details for further understanding. These sub-regulations are as follows:

1. Notification of the Personal Data Protection Committee (“PDPC”) re: the security measures of the Data Controllers

This Notification set forth the minimum standard for security measures provided by data controllers in relation to prevent the access, use, amendment and disclosure of personal data without authority. The data controller shall provide organization measures, technical measures and physical measures including prediction of risks and preventive measures as well as remedial measures after damage occurred. Such measure shall be analyzed and modified up to date and consistent with the technological advances. In addition, the data controllers shall arrange such measures to be carried by the data processor as well.

2. Notification of PDPC re: the exemption from maintaining records of the Data Controllers that are small businesses

Due to intention to relax burdens for SMEs and community enterprises, non-profit foundations and associations, this Notification exempts duty of maintaining activity records regarding the collection, use and disclosure of the personal data lied under their responsibility. However, the exemption of this Notification excludes the collection, use and disclosure of the data having impact on rights and liberty of the data subject or sensitive personal data.

3. Notification of PDPC re: criteria for the consideration of the issuance of administrative fines of the Expert Committee

The Notification set forth criterions for the Expert Committee in relation to administrative penalties for example, the notice of allegation shall be in form of writing or reliable electronic means, the consideration of penalties shall include severity of violation, value of damages, size of business, preventive measures level and remedies given to the data subject etc. In addition, the administrative penalties shall be assessed base upon level of

severity. Moreover, the order issued by the Expert Committee is deemed final.

4. Notification of PDPC re: guidelines and procedures for the preparation and maintenance of records of personal data processing activities for the Data Processor

This Notification sets forth the data which the data processors shall maintain records of personal data processing activities in accordance with section 40 (3) of the PDPA. For example, name and details of data processors, data controllers who give instruction and data protection officer (“DPO”) as well as types of collection, use and process etc. the records shall be in form of writing or reliable electronic means.

LAND

The proposed acquisition of land for residential purpose by foreigners

For granting the right to acquire land by foreigners, it has been claimed that this is only a measure to create incentives to foreigners to invest money in Thailand. Currently, the Land Department is in the process of preparing a draft Ministerial Regulation on prescribing rules, procedures and conditions for land acquisition to be used as a residence for foreigners according to economic stimulus and investment measures by attracting foreigners with high potential, B.E. under Section 96 bis of the Land Code (“Draft Ministerial Regulation”).

The key criteria of the Draft Ministerial Regulation are as follows:

1. A foreigner must invest at least 40 million baht and must maintain investment for at least 3 years in a specified type of business, such as investing in infrastructure funds established under the law on securities and stock exchange;

2. The total area of land must not exceed 1 Rai; and

3. the foreigner must use such land as their residence.

In case of breach of investment conditions or no residential use, the rights will be revoked, and the land must be sold out.

VISA

Long-Term Resident (LTR) Visa

Regarding the new Notification of the Ministry of Interior on the LTR visa issued on 2 June 2022 (the “Notification”), the details of the Notification are as follows:

LTR visa shall be available to four types of foreigners including:

- Wealthy global citizens
- Wealthy Pensioners
- Work-from-Thailand professionals
- Highly skilled professionals

Please note that spouse and children under 20 years of age of an LTR visa holder also qualify (up to four dependents per a visa holder).

In addition, a LTR visa holder shall be entitled to the following benefits:

- A visa with 10-year validity (which can be extended);
- The requirement to report to immigration once a year;
- Fast track service at airports;
- Multiple re-entry permit;
- Permission to work in Thailand (digital work permit);
- Personal income tax rate reduction to 17% for highly skilled professionals;
- Exemption from the four Thais to one foreigner employment requirement ratio.

Should you have any question, please do not hesitate to contact us via info@bglallaw.com

