



Financial

Thai Cabinet approved the draft amendment to Social Security Act B.E. 2533 regarding early pension plan

As there are certain provisions on the current Social Security Act B.E. 2533 that are inappropriate and inconsistent with transforming economic and social conditions, on 10 May 2022, Thai Cabinet has passed its resolution on the draft amendment to Social Security Act B.E. 2533 (“Act”) as proposed by the Ministry of Labor which intends to provide more benefits for insured persons and offer financial relief to SSF members who are suffering from the economic downturn due to the COVID-19.

There are several issues which have been raised by the draft amendment to the Act which has the following significant matters:

1. Amending the type of compensation benefits in case of old age from 2 types into 3 types, namely superannuation, pension and superannuation gratuity by adding "advance pension"

2. Amended Social Security Fund (“SSF”) in case of old age benefits which allows an insured person to receive superannuation pension, superannuation gratuity, or to get an advance on their pension or use the pension as collateral for bank loans. The examples are as follows:

- The insured person who has contributed to SSF for a period of not less than 180 months and when the person reaches the age of 55 can choose between receiving superannuation

pension or superannuation gratuity from the following month attaining the age of 55;

- The insured person can get a partial advance on the pension to be used before reaching the age of 55; or
- The insured person can use part of his pension as collateral for loans with banks or financial institutions.

3. Extension of the advanced age of the insured who is employed from 60 years of age to 65 years of age in order for an elderly worker to receive protection in the social security system.

4. Other additional benefits including the following:

- Increasing disability benefits and disability compensation from 50 percent of wages to 70 percent of wages;
- Increasing the length of time for maternity leave allowance by paying at the rate of 50 percent of the wages, for a period of 98 days, or the period specified in the Ministerial Regulation; and
- Extending benefits relating to child benefits by giving the insured person who has terminated his status as an employee and after the termination of the insured person who receives payment of benefits relating to child for another 6 months.

SEC approved a resolution prohibiting Investment Company from offering new securities to investors

On 17 May 2022, the Capital Market Supervisory Board (“CMSB”) under the Securities and Exchange Commission (“SEC”) has issued a resolution to amend

the guideline on offering securities to investors by disallowing securities-issuing companies and listed companies that operate as an investment company from offering new securities in order to prevent legal infringement, including regulatory arbitrage. This amendment will be open for the public hearing process.

“Investment company” can be defined as a company that allocate more than 40% of its assets to passive investment, or investing without participating in management (excluding hedging investment). Only investment for liquidity management will remain unaffected. In addition, certain financial businesses are exempted from this amendment, such as commercial banks and financial institutions.

Listed companies that have passive investments totaling more than 40% of their assets are obliged to disclose investment information in financial statements to be used for tracking. Securities-issuing companies and listed companies that fail to comply with this amendment will be prohibited from offering all types of securities to all investors as specified under the Securities and Exchange Act of 1992.

The extension of Land and building tax payment period

To ease the economic effect of Covid-19 outbreaks, on 23 June 2022, the Ministry of Interior (“MOI”) announced that the collection on land and building tax would be extended for another 3 months without subject to the fine, from the deadline in April 2022 extended to July 2022 for the taxpayers.

In addition, the extended period would also benefit for the land and building tax installment payments as follows:

The first installment: the deadline in April 2022 extended to July 2022;

The second installment: the deadline in May 2022 extended to August 2022; and

The last installment: the deadline in June 2022 extended to September 2022.

Cannabis

Legalization of Cannabis in Thailand

For many years, marijuana and hemp have been classified as narcotics under category 5 of the Narcotics Act of Thailand (“NAT”), until recently the Notification of the Ministry of Public Health, RE: Narcotics under Category 5 of the Narcotics Act B.E. 2565 (2022) (the “Notification”) was published on 9 February 2022, and later took effect on 9 June 2022, onwards. It is important to note that apart from the extracts from all parts of the cannabis that are still classified as narcotics under category 5, other parts of cannabis are no longer stated in the category 5 of narcotic list.

This new classification made Thailand become the first nation in Asian region to legalize cannabis. At present, a person is allowed to grow cannabis for personal use, while the operators are permitted to grow this plant for commercial purpose, only by registering online through “Plook Ganja” application or website.

Please note that there are certain activities in relation to cannabis that require a prior approval from the relevant authorities. For the importation of seeds, for instance, approval shall be granted by the Ministry of Agriculture and Cooperatives.

Company

The amendment to the Public Limited Company Act B.E.2565 (2022)

After a Bill of the amendment to the Public Limited Company Act B.E.2535 (1992) No.4 B.E.2565 (2022) (the “Amendment”) has been approved, this Amendment has become effective on 22 May 2022.

Its objective of the Amendment is to modernize the corporate processes by removing outdated and complicated requirements as well as applying the use of electronic methods in corporate processes including:

- To provide additional options for the public limited company (“PLC”) to advertise via electronic means other than via newspapers;

- To allow the PLC and its board of directors (“BOD”) to submit applications or documents via electronic means in case of complying with provisions of Public Limited Company Act;
 - To allow public limited company to conduct the meetings via electronic means according to the laws related to e-meeting;
 - To allow a shareholder to appoint proxy via electronic means (e-proxy) as long as the method is safe, reliable, and able to verify that the proxy has been duly authorized by the shareholder.
2. NFTs are regarded as digital assets in the following cases:
 - In case where the NFTs have underlying services and rights to acquire or redeem certain physical or digital properties. The exchange of such NFTs must be conducted through NFT marketplace.

Digital

NFTs under Thai regulations

With the occurrence of non-fungible tokens or NFTs, which can be seen as one form of digital assets, in this relation, the Securities and Exchange Commission of Thailand (“SEC”) has then stipulated a guideline regarding NFTs in order to protect investors. To clarify, NFTs is regarded as an appliance of technology that represents ownership or rights of specific intangible property, including but not limited to art, music and picture through NFTs marketplace.

However, there are one significant issue that needs to be addressed before hand. This is because in some cases, NFTs can bear a resemblance to investment tokens or utility tokens, defined as one of “digital assets” under Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) (“Emergency Decree”), but, at the moment, NFTs is not yet to be defined as “digital assets” under the Emergency Decree.

In this relation, NFTs will be determined on a case-by-case basis to distinguish whether or not it falls under the scope of digital assets under the Emergency Decree. The determining factors can be considered as follows:

1. NFTs are not regarded as digital assets in the following cases:
 - In case where NFTs is attached to intangible property which is inseparable;
 - There is no determination of any additional rights to intangible property; and

- There are no objectives for NFTs to be utilized as an exchange medium.
2. NFTs are regarded as digital assets in the following cases:
 - In case where the NFTs have underlying services and rights to acquire or redeem certain physical or digital properties. The exchange of such NFTs must be conducted through NFT marketplace.

However, currently there is no NFT marketplace that obtains a license to operate as an Digital Asset Exchange. In addition, the licensed Digital Asset Exchange is prohibited from trading NFTs which fall under the terms of digital assets.

Currently, Samart Corporation, via a subsidiary company namely Samart Digital Company (“SDC”), is planning to launch its first NFTs of sports moments in both pictures and video clips by the final quarter and then expand to developing its own tokens of world-class collectible NFTs.

Please note that SEC is in the process of reviewing the criteria on the regulatory control of NFTs and the NFT marketplace to conform with international guidelines.

The amendment to ICO portal regulations

Due to the fact that the regulations in relation to initial coin offering (“ICO”) was ambiguous and unclear for investors, thus the Securities and Exchange Commission (“SEC”) has been seeking the way to mitigate this problem. The main intentions of the SEC were to figure the amendments to ICO portal rules in order to prevent conflicts of interest (“COI”), address the ineffectiveness of outdated regulations, and achieve the similar standard with financial advisors (“FA”) for the offering of securities. On 2 June 2022, the SEC has resolved on the proposed amendments regarding ICO portals and related digital token offerings as follows:

1. To prohibit ICO portals from operating an ICO in the case of COI.

For example, directors, executives, and any person responsible for screening the digital token for the

offering must not be among the same group of people responsible for overseeing or operating the offering, or who have personal relations or interests that may affect their duties.

2. To enhance flexibility and efficiency by allowing ICO portals to provide certain tasks to outsource in regard to digital token offering.

For example, contacting and providing services to investors, as well as supporting the subscription of the digital token offering.

3. To amend other related regulations in governing digital token offering.

For example, monitoring ICO portal after obtaining approval from the SEC, requiring ICO portal to notify the SEC in case of the change of obligations and/or qualifications, creating a clearness on the Notification regarding digital token offering

Currently, the SEC would like to seek further comments from the public in relation to the proposed amendments. Anyone is allowed to submit their feedbacks through the website of the SEC, from 23 June 2022 to 23 July 2022.

PDPA

PDPA and its supporting Notifications

The new era of personal data protection in Thailand has begun since the Personal Data Protection Act (“PDPA”) has fully been implemented since 1 June 2022, after the long postponement. To comply with the PDPA, the four Notifications have been approved and published in the Royal Gazette on 21 June 2022, with the purpose of relieving the enforcement of punishment specified under the PDPA, especially for SMEs.

The details of those 4 Notifications are as follows.

1. The first Notification is aimed at exempting SMEs from compliance with the PDPA's practices on the recording of processing activities.

2. The second Notification is intended to relax the enforcement of the punishment.
3. The third Notification is concerned about methods of making and recording processing activities involving personal data and security measures for personal data protection.
4. The last Notification is set out principles for the Expert Committee in relation to execution of administrative fines for those who breach the PDPA.

In addition, the government insisted that instead of creating a burden for SMEs and community enterprises, PDPA was enacted in order to benefit people in whole and create least burden for compliance. Moreover, PDPA is meant to support the digital-driven economy which would generate more percentage of GDP of Thailand.

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

